1	ERIC LEVINRAD (State Bar No. 169025) elevinrad@wrslawyers.com		
2	WOLF, RIFKIN, SHAPIRO, SCHULMAN &	& RABKIN, LLP	
3	11400 West Olympic Boulevard, 9th Floor Los Angeles, California 90064-1582		
4	Telephone: (310) 478-4100 Facsimile: (310) 479-1422		
5	Attorneys for Plaintiff ROAR SPIRITS, LLC		
6	f/k/a EĽ BANDIDO YANKEE, LLC		
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9	UNITED STATES	DISTRICT COURT	
10	NORTHERN DISTRICT OF CALIFO	ORNIA, SAN FRANCISCO DIVISION	
11			
12	ROAR SPIRITS, LLC, a Delaware limited	Case No.	
13	liability company, f/k/a EL BANDIDO YANKEE, LLC,	COMPLAINT FOR JUDICIAL REVIEW	
14	Dlaintiff	REVIEW	
15	Plaintiff,		
16	VS.		
17			
18	REBEL WINE CO., LLC, a California limited liability company,		
19	Defendants.		
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COMPLAINT FOR JUDICIAL REVIEW

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Plaintiff Roar Spirits, LLC, f/k/a El Bandido Yankee, LLC ("Plaintiff") for its complaint against defendant Rebel Wine Co., LLC ("Defendant") alleges as follows:

PRELIMINARY STATEMENT

On June 30, 2020, Plaintiff filed applications to register the marks EL 1. BANDIDO YANKEE ("EL BANDIDO YANKEE Mark") and EL BANDIDO YANKEE TEQUILA COMPANY BLANCO and design ("Design Mark," collectively referred to with the EL BANDIDO YANKEE Mark as the "EL BANDIDO YANKEE Marks"):



The application for the EL BANDIDO YANKEE Mark was assigned the Application Serial No. 90028911(the "'911 Application"); and the Design Mark was assigned the Application Serial No. 90029117 (the "'917 Application.") (The '911 Application and the '917 Application are collectively referred to as the "Applications.")

- 2. Defendant manufactures boxed wines and wine-based seltzers that it sells under the mark BANDIT. While Defendant only sells wines and wine-based seltzers under the BANDIT mark, that mark is registered for "alcoholic beverages except beers" in class 33.
- Defendant opposed Plaintiff's Applications to register the EL 3. BANDIDO YANKEE Marks. Defendant's opposition was assigned Opposition No.

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91268314 ("Opposition"). Defendant's Opposition was largely based on the fact that its broad registration for "alcoholic beverages except beers" in class 33 encompasses tequilas within its scope. Based on this, Defendant Opposer asked the TTAB to disregard the numerous and obvious dissimilarities between the BANDIT and EL BANDIDO YANKEE Marks, the fact that they are used on widely disparate alcoholic products (tequila v. boxed wines), and the fact that, as these marks are used in the real world, there is *no chance* of any consumer being confused between these marks, as evidenced by the lack of actual confusion, despite the marks having co-existed for a significant period of time. This is obvious based even on a cursory review of the products:



4. In any event, the fact that BANDIT'S broad trademark registration includes within its scope tequilas is insufficient on its own to sustain the opposition, and the TTAB erred in sustaining the Opposition on this basis. There are thirteen separate factors that the Board was required to consider in adjudicating whether Plaintiff's marks could be registered. Contrary to the findings of the TTAB, the majority of these factors weighed against Defendant's opposition. As a result, the TTAB erred in sustaining Defendant's Opposition and denying Plaintiff's registration of the marks.

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PARTIES

- 5. Plaintiff is a Delaware limited liability company duly organized and existing under the laws of the state of Delaware with a place of business at 211 N. Williamsburg Drive, Suite A, Bloomington Illinois, 61704.
- 6. On information and belief, Defendant is a limited liability company organized and existing under the laws of California, having a place of business at 100 St. Helena Hwy South, St. Helena, California, 94574.

JURISDICTION AND VENUE

- 7. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§1071(b)(1) and (4).
- 8. This Court has personal jurisdiction over Defendant because Defendant is a California limited liability corporation with its principal place of business located in the County of Napa.
- 9. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)(1) because the Defendant resides in the County of Napa.

FACTS COMMON TO ALL CLAIMS

- A. The Trademarks at Issue In This Proceeding
 - 10. The trademarks which are the subject of Plaintiff's applications are:
 - The EL BANDIDO YANKEE TEQUILA COMPANY BLANCO and Design Mark:



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for "Blue distilled agave tequilana weber liquor" in Class 33.

- The EL BANDIDO YANKEE mark for "Distilled blue agave liquor" in Class 33.
- 11. Defendant is the owner of the registered word mark BANDIT for "alcoholic beverages except beers" in Class 33.

El Bandido Yankee Tequilas В.

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- Plaintiff Roar Spirits, LLC, which was previously known as El Bandido 12. Yankee Tequila Company, LLC, was co-founded by two former professional athletes, Jim Bob Morris, a former NFL player who played for the Green Bay Packers, and Chris Chelios, a former NHL player who played for the Chicago Blackhawks.
- The name "El Bandido Yankee" is a reference to a line from the movie 13. Butch Cassidy and the Sundance Kid in which a character in the film says "Some say it's the Bolivian Bandits, and some say it's the Bandidos Yankees." At the time that El Bandido Yankee came up with its name, it was not aware of Defendant's Bandit's wine products.
- Wines and tequilas are altogether different alcohol products. Tequila is 14. a distilled spirit liquor, regulated by the CRT in Mexico, that is made from the blue weber agave plant (agave tequilana), using a double (and sometimes triple) distillation process, to create a liquor with a minimum alcohol content to qualify as Tequila in the US of 40% alcohol by volume ("ABV"). In contrast, wines are produced by fermenting grapes, and no distillation process is employed in the manufacture of wines. Additionally, wines have a far lower alcohol content than distilled liquors, typically ranging between 11% and 15% ABV."

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¹ As is discussed in detail below, while Opposer's BANDIT mark is registered for 'alcoholic beverages except beers," the undisputed evidence is that Opposer has never used this mark for any products other than wines or wine-based hard seltzers, and, in particular, has never used this mark for tequila.

15. El Bandido Yankee tequilas are manufactured by a single distillery in Jalisco, Mexico. Plaintiff does not, and never has, produced, sold or distributed any wine products, and has no intention of producing, selling or distributing any wine products in the future. Plaintiff also does not and never has produced, sold or distributed any hard seltzer products (whether tequila-based, wine-based or otherwise), and has no intention of producing, selling or distributing any tequila-based, wine-based, or other types of hard seltzer products of any kind in the future.

C. Plaintiff's Product Packaging

16. Plaintiff bottles its tequilas in distinctively designed glass bottles, with El Bandido Yankee's name and one of El Bandido Yankee's designs on such bottles, including the words "El Bandido Yankee Tequila Company" on the label. A 750 ml bottle of El Bandido Yankee tequila, is depicted adjacent to a one liter box of Bandit wine in the following photograph:



- 17. Plaintiff does not sell or intend to sell any of its tequila products in tetra-pak boxes or boxes of any other kind and also does not sell any tequila or tequila products in cans. Specifically, Plaintiff does not produce or sell any kinds of "hard seltzer" products, including, without limitation, any tequila-based hard seltzers, in cans or otherwise.
 - 18. Plaintiff always includes the words "El" and "Yankee" alongside the

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word "Bandido" and typically includes "Tequila Company" on its product packaging. El Bandido Yankee never refers to itself or its product on its product packaging as simply "El Bandido," or "Bandido" without the inclusion of the words "El" and "Yankee." Additionally, all El Bandido Yankee tequila bottles always include its design on its bottles with the El Bandido Yankee product name, consisting of a stylized image of a masked figure ("El Bandido") wearing a traditional cowboy hat ("Yankee").

D. Plaintiff's Target Market

19. The target market for Plaintiff's El Bandido Yankee tequila products is college Educated 27-54 year olds, with household income over \$85,000 per year, who appreciate high quality products with transparency in ingredients and production. Plaintiff's marketing message is around creating elevated experiences, typically within nightlife settings, dinners or events along with a high connection to organized and professional sports – NFL, NHL, NASCAR, to name a few, with events the brand has sponsored. Plaintiff does not market its products to campers, hikers or other outdoors enthusiasts. Indeed, given that El Bandido Yankee tequilas are only sold in large, 750 ml glass bottles, this product is particularly ill-suited to take on a camping or hiking trip.

E. Plaintiff's Marketing Efforts and Strategy

- 20. Consistent with its co-founders being former professional athletes, a key part of Plaintiff's marketing strategy for its El Bandido Yankee tequilas is to enter into numerous sponsorship deals with various professional sporting events and athletes. For example, Plaintiff has engaged in the following sports-related marketing activities to promote its El Bandido Yankee tequilas:
 - Hula Bowl, January, 2022. Plaintiff hosted tailgating parties, concessions vendor, a barbecue with Blues Hog, and other marketing events, at a cost of approximately \$125,000.
 - Busch Clash, Memorial Coliseum, Los Angeles, the kickoff event for

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Nascar. Plaintiff threw a Busch Clash party at the bar at the top of the Hotel Indigo in downtown LA, and entertained key account holders for the races on Sunday of that weekend, at an approximate cost of \$5,000.

- Irwindale Late Model races Southwest Series at Irwindale Speedway. Plaintiff hosted all racing pole awards, including full El Bandido Yankee signage and tasting at the race track on the Saturday before the Busch Clash, at an approximate cost of \$2,000.
- Daytona 500 + Speedweeks Events El Bandido Yankee sponsorship for Truck, Xfinity, Cup races; tasting activity; sponsorship of the Pit Road Pickers band for 2 concerts during speed weeks, at an approximate cost of \$25,000.
- Plaintiff places El Bandido Yankee advertising on SiriusXM Nascar Racing Channel 90 Front Stretch show featuring Pat Patterson, and is an official sponsor of the show. The advertising cost on this show for 2022 is \$25,000.
- Plaintiff sponsors Extreme Skater Brittan Morris, who participates in Ice Cross, an extreme winter sporting event, at an annual cost of \$2,000.
- Plaintiff sponsors MMA Fighter Dustin Jacoby, at an approximate annual cost of \$2,000.
- Plaintiff promotes its El Bandido Yankee tequilas at all Chicago Blackhawks hockey games via WGN radio, at an approximate annual cost of \$15,000.
- Plaintiff has El Bandido Yankee concession stations throughout Van Andel Arena in Grand Rapids, Michigan for the Grand Rapids Griffins of the AHL, at an approximate annual cost of \$20,000.
- Plaintiff participated as an El Bandido Yankee vendor during the BBQ contest at the Big 12 Basketball Championship in Kansas City,

Missouri at an approximate cost of \$10,000.

- Plaintiff has promoted its El Bandido Yankee tequilas at numerous
 Rodeo events, through sponsorships and activations
- Plaintiff promoted its El Bandido Yankee tequilas at the Palm Beach
 Boat & Yacht Show, at an approximate cost of \$17,000.
- Additionally, Plaintiff maintains suites with the Kansas City Chiefs, Green Bay Packers, Chicago Bears and Kansas University, all for promotional purposes.
- 21. In addition to marketing its products through the sponsorship of sporting events, venues and athletes, Plaintiff also engages in conventional marketing of its El Bandido Yankee tequilas, such as advertising in magazines, attending trade shows, advertising on the internet and advertising through social media. Plaintiff's sponsorship of sporting events, venues and athletes makes up approximately 30% of its total annual marketing expenditures.

F. El Bandido Yankee Tequila Price Point

22. The per bottle price which Plaintiff charges its wholesale distributors for El Bandido Yankee Tequilas ranges from \$19-24, depending on the state and expression of tequila. While both wholesalers and retailers are entitled to sell these products at whatever prices they see fit, Plaintiff recommends that its wholesale distributors sell El Bandido Yankee tequila to their retail customers for \$25-39 per bottle depending on price level and expression, and that retailers who sell El Bandido Yankee tequila to consumers by the bottle charge a suggested retail price of \$39-44 per bottle. In general, El Bandido Yankee tequila is sold to end user consumers at the price range of between approximately \$39 and approximately \$50 per 750 ml. bottle. This is a significantly higher price point than the Bandit boxed wine products, which are sold at the retail price ranges of \$7-\$10 per 1 liter box and \$4-\$5 per 500 ml box.

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G. El Bandido Yankee Product Distribution

23. Plaintiff sells its El Bandido Yankee tequila products to licensed distributors, who then, in turn, sell those products on a wholesale basis to retail outlets, such as retail stores and bars and restaurants, who then sell the El Bandido Yankee product to the end user consumers. El Bandido Yankee tequilas are sold by numerous large chain store retailers, such as, for example, BevMo, Total Wine and Jewel-Osco as well as by numerous independent, non-chain retail stores. For example, in the Chicago area, El Bandido Yankee tequilas are sold at Garfield's Liquors and Liquor Barn, which, on information and belief, do not sell Bandit boxed wines.

- 24. El Bandido Yankee tequilas are also sold in numerous restaurants and bars. Of the approximately 1000 licensed accounts selling El Bandido Yankee in Illinois, approximately 50% of the accounts are "on-premise" bars and restaurants that generate 50% of El Bandido's revenue. For example, El Bandido Yankee tequilas are served at Chicago Cut Steakhouse, Gibson's Steakhouse and Tao as well as at the Fat Rosie's restaurants in the Chicago area. On information and belief, none of these restaurants serve Bandit Wines.²
- 25. Additionally, unlike Bandit Wines, El Bandido Yankee tequilas are not sold in any self-standing Seven-Eleven type convenience stores and are also not sold in any gas station-affiliated convenience stores, such as the Extra Mile convenience stores located at many Chevron gas stations. On information and belief, neither are El Bandido Yankee tequilas sold by CVS, Rite-Aid or any other similar large drugstore chains.

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² Based the "Wine Locator" search tool maintained on the Banditwines.com website, Bandit Wines appear to be served at very few restaurants, and virtually no "high end" restaurants such as Chicago Cut Steakhouse or Tao and "Taco and Tequila" restaurants such as Fat Rosie's that serve El Bandido Yankee tequila.

H. Retail Displays of Liquors Such as El Bandido Yankee Tequilas as Compared to Wines Such as Bandit

- 26. In the retail setting, liquors such as, for example, tequila, gin, vodka and whiskey, are generally displayed separately from both wines and beers in retail stores. Depending on the size of the store, liquors are generally displayed for sale on different shelves from both wines and beers and are often displayed in different aisles or different sections of the store altogether.
- 27. Similarly, on-line retailers of alcohol products typically have liquors listed in a different category on their websites from both wines and beers. For example, the home page of the Bevmo.com website has different drop-down menus for "Wine," "Spirits," "Beer and Hard Seltzer," and other product categories, to enable customers to search for these various product types by category.

I. Rebel Wines' Bandit Wine Products

28. Defendant uses the BANDIT mark to sell a line of boxed wine products and wine-based hard seltzers. Defendant affirmatively markets its boxed Bandit wines products to campers, hikers and outdoor enthusiasts. Indeed, the home page of Defendant's website located at www.banditwines.com recites:

We love wine and we love to explore beautiful landscapes, so in 2003 we created Bandit. This light-weight container is adventure-ready, keeps our wine fresh and delicious, and uses natural resources responsibly. From dinner around the campfire to back-packing on the Pacific Crest Trail, Bandit is ready for wherever the spirit of adventure leads you. Live well and go explore!

In this vein, the home page of the Bandit Wines website depicts a backpacker with a Bandit Wine box in the packet of his or her backpack (among other images of hikers, campers, and outdoor enthusiasts enjoying Defendant's Bandit boxed wine products):

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29. On information and belief, Defendant has only used the BANDIT mark to sell wines and wine-based hard seltzers, has never used the mark for tequilas or any other liquors, and has no intention of ever doing so. Defendant's Bandit market is registered for a broad range of products (all alcoholic beverages except beers), despite Defendant only actually using that mark, and only actually having the intention of using that mark, on a very small subset of such products (wines and wine-based seltzers).

J. <u>Defendant's Contrary Positions Taken in Other Proceedings With</u> <u>Respect to the Similarity, or Lack Thereof, of the Marks at Issue</u>

30. In a previous TTAB proceeding, Defendant sought the cancellation of a beer maker's MASKED BANDIT trademark. When presented with evidence in response to that proceeding of the marks BANDOLERO and LA BANDALERA for tequila, Opposer took the position that the BANDOLERO and LA BANDALERA marks "are not relevant to this case as those are marks distinct in appearance and sound." The marks Bandalero and La Bandalera are similar sounding to "Bandido" and, like Bandido, mean "Bandit." Defendant's contention in that case that "those are marks distinct in appearance and sound" constitutes strong evidence, if not a binding judicial admission, that, contrary to Defendant's claim in the TTAB proceedings below, the "El Bandido" in the EL BANDIDO YANKEE marks is similarly distinct in appearance and sound from Defendant's BANDIT mark. In light of these admissions, the TTAB erred in finding the marks to be similar and denying Plaintiff's registration of the EL BANDIDO YANKEE marks on that basis.

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31. Similarly, in another case, Defendant secured the assignment to itself of the mark EL BANDIDO NEGRO for "alcoholic beverages, namely, tequila." Defendant failed to file a section 8 declaration, resulting in the cancellation of the EL BANDIDO NEGRO mark. Opposer's abandonment of this mark evidences the dissimilarity of the EL BANDIDO NEGRO mark for tequila and the BANDIT mark, and, by extension, the dissimilarity of the EL BANDIDO YANKEE marks for tequila and the BANDIT mark.

K. Numerous Other Third Parties Use the Term Bandit or Variations Thereof on Food and Beverage Related Products and Services

32. Defendant is not the only party to use the BANDIT mark for its products. To the contrary, numerous other entities use the mark Bandit for the sale of various food and beverage-related products and services. These include BURGER BANDIT in International Class 043 (for "Fast-food restaurant services; Restaurant and cafe services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Restaurants featuring home delivery; Self-service restaurants; Take-out restaurant services"); INCHWORM BANDIT in International Class 33 (for "Alcoholic beverages containing fruit; Alcoholic beverages, namely, tequila, jalapeno, basil, pina, and lime; Alcoholic fruit beverages; Alcoholic fruit cocktail drinks; Prepared alcoholic cocktail."); AGAVE BANDIDO in International Class 43 (for "Bar services; Café services; Catering services; Restaurant services; Mobile restaurant services; Pop-up restaurant services"); PIZZA BANDIT in International Class 43 (for "Restaurant and bar services"); LOCOS BANDITOS in International Class 30 (for "Food, namely, tea, tea extracts, tea-based beverages, coffee-based beverages, snack foods in the nature of wheat based snack food, corn based snack food; prepared and packaged meals and food package combinations consisting primarily of pasta or rice"); BANDIDOS TAQUERIA B in International Class 43 (for "Restaurant and bar service, including

1	restaurant o	carryout and catering services"): BURRITO RANDITO in International	
2	restaurant carryout and catering services"); BURRITO BANDITO in International		
		r "Restaurant; Restaurant services"); FORAJIDO (which translates to	
3	"bandit", "outlaw" or "fugitive") in International Class 33 (for "Alcoholic		
4	beverages, namely, distilled spirits"); BANDITOS CANTINA in International Class		
5	43 (for "Restaurant, bar and catering services"); SALTY BANDITA in Internationa		
6	Class 43 (for "Restaurants; restaurant services; restaurant, bar, and catering services		
7	restaurant and catering services; catering in fast-food cafeterias"); and BANDIDOS		
8	in International Class 43 for "Mexican restaurant and bar services.")		
9	33.	Indeed, a simple Google search for "bandit alcohol reveals numerous	
10	types of alcoholic beverages sold under marks which include the use of the term		
11	"Bandit," including:		
12	•	Time Bandit vodka	
13	•	Bandit's Rum	
14	•	Goofy Bandit Espressotini	
15	•	Bandit's Traditional Moonshine	
16	•	Bandit's Coffee Moonshine	
17	•	Penguin Bay Blackberry Bandit (blackberry wine)	
18	•	The Bandit – the BX Press Cidery (cider)	
19	•	Bandit Gypsy Hill Brewing (pale ale)	
20	•	Apple Bandit (ciders)	
21	•	Bandit Brewing (beers)	
22	•	Bandit Queen Barrel Aged Peach Sour	
23	•	Barrel Bandit (bourbon)	
24	•	Bandits Coffee, Apple Pie and Oatmeal Cookie Moonshine	
25	•	Westend The Barrel Bandit (wine)	
26	•	Houghton The Bandit Shiraz and Cabernet (wine)	
27	L. The	Trademark Trial and Appeal Board Proceedings	
28	34.	On March 23, 2021, Defendant filed a Notice of Opposition to	
	I		

COMPLAINT FOR JUDICIAL REVIEW

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Plaintiff's application for the registration of the EL BANDIDO YANKEE marks. Defendant's Opposition contends that Plaintiff "is not entitled to register the EL BANDIDO Marks and Applicant's Applications should be denied in accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d)."

- 35. Defendant's Opposition is based on the contention that the EL BANDIDO YANKEE Marks "are likely to cause confusion, mistake or to deceive the public because they are virtually identical to Opposer's BANDIT Mark and the goods for which Opposer has registered, and on which Opposer uses Opposer's BANDIT Mark are identical, substantially similar or related to the goods identified in Applicant's Applications, namely, 'distilled blue agave liquor' and 'blue distilled agave tequilana weber liquor,' and said goods are purchased by the same group of consumers."
 - 36. The proceeding was assigned Opposition No. 91268314.
 - 37. Plaintiff, in its Answer, denied Defendant's allegations.
- 38. On July 18, 2023, the Board issued a final decision sustaining the opposition filed by Defendant. A true and correct copy of the TTAB's ruling is attached as Exhibit 1. That decision is subject to review by this Court under § 21(b) of the Federal Trademark Act, 15 U.S.C. § 1071(b).

FIRST CLAIM FOR RELIEF

(Judicial Review of Trademark Trial and Appeal Board Final Decision)

- 39. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 38 as if set forth fully herein.
- 40. As a cause of action and ground for relief against Defendant, Plaintiff seeks, in part, a *de novo* judicial review pursuant to § 21(b) of the Federal Trademark Act, 15 U.S.C. § 1071(b), of the final decision rendered by the Board in *Rebel Wine Co., LLC v. ROAR Spirits, LLC*, Opposition No. 91268314, on the following grounds:
 - a. The TTAB erred in finding Plaintiff's and Defendant's

respective marks to be similar in their entireties as to appearance, sound, connotation, and commercial impression to support a likelihood of confusion, despite the significant dissimilarities between the respective marks, including significant dissimilarities in connotation and commercial impression, which, alone requires a finding of dissimilarity between the marks. *Cf Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459, 1460 (Fed. Cir. 1998) (affirming dismissal of opposition where the marks "CRISTAL" for champagne and "CRYSTAL CREEK" for wine evoked different images in the minds of relevant consumers.).

- b. The TTAB erred by failing to accord sufficient weight to the absence of evidence of actual confusion, erroneously finding such evidence to be neutral, rather than to weigh against a finding of a likelihood of confusion.
- c. Given the evidence of the significantly different price points between Plaintiff's high-end tequila products, and Defendant's inexpensive boxed wine products, the TTAB erred in finding that the conditions under which and buyers to whom sales are made (i.e. "Impulse" v. Careful, Sophisticated Purchasing) did not weigh in favor of a finding of lack of confusion.
- d. While correctly finding that Defendant had failed to produce sufficient evidence to establish the commercial strength of its mark, the TTAB erred in finding Defendant's mark to be conceptually strong, given the evidence of substantial third-party use of such mark, or close variations thereof, on food and beverage related products and service, including alcoholic beverages.
- e. The TTAB erred in finding that Defendant was not estopped from asserting the similarity of Plaintiff's El Bandido Yankee marks with its Bandit mark, after having taken the position in a different proceeding, in which it prevailed, that the marks BANDOLERO and LA BANDALERA for tequila were "not relevant to this case as those are marks distinct in appearance and sound."
 - f. The TTAB erred in finding that the similarities between

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and Defendant's BANDIT word mark weighed in favor of a finding that confusion is likely.

- g. The TTAB erred in finding that the similarities between Plaintiff's EL BANDIDO YANKEE word mark and Defendant's BANDIT word mark weighed in favor of a finding that confusion is likely.
- h. As a result of the above-described errors, the TTAB erred in finding that the weighing of the *DuPont* factors supported a likelihood of confusion between Plaintiff's and Defendant's respective marks.
- 41. Plaintiff will introduce the following additional evidence to this Court for *de novo* consideration:
- a. Survey evidence establishing that there is no likelihood of confusion between the parties' respective marks.
- b. Additional evidence establishing the conceptual weakness of Defendant's BANDIT mark.
- c. Evidence that Defendant never used the Bandit mark for any tequila products and has never had any intention of doing so.
 - 42. The TTAB's decision was contrary to pertinent law, not supported by

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1	substantial evidence and/or was in error in light of the evidence of record with the		
2	TTAB, the allegations in this Complaint, and additional evidence to be submitted by		
3	Plaintiff as set forth above. Therefore, the TTAB's July 18, 2023 decision sustaining		
4	Opposition No. 91268314 should be reversed.		
5	PRAYER FOR RELIEF		
6	WHEREFORE, Plaintiff prays for entry of a judgment ordering that:		
7	The Court reverse the final decision of the Board in the Opposition and, in		
8	accordance with § 37 of the Federal Trademark Act, 15 U.S.C. § 1119, direct the		
9	USPTO to register each of Plaintiff's EL BANDIDO YANKEE Marks which are		
10	the subject of the Applications.		
11			
12	DATED: September 19, 2023 WOLF, RIFKIN, SHAPIRO,		
13	SCHULMAN & RABKIN, LLP		
14			
15	By: /s/ Eric Levinrad		
16	ERIC LEVINRAD		
17	Attorneys for Plaintiff ROAR SPIRITS, LLC f/k/a EL BANDIDO YANKEE, LLC		
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Joseph Maxwell

Commissioning Editor,
Documentaries (History and Science)
Special Broadcasting Service (SBS)
Locked Bag 028
Crows Nest NSW
Australia 1585
T +61 2 9430 3905
F +61 2 9430 3865
E joseph.maxwell@sbs.com.au

Heinrich Mayer

Producer Interspot Film Walter Jurmann Gasse 4 Vienna Austria 1230 T +43-1-80120-420 F +43-1-80120-222 E mayer@interspot.at

Germaine McCormack-Kos

Producer/Author Independent 6 Rue Guenegaud Paris France 75006 T +33 6 12 06 65 82 E germaine.kos@gmail.com

Bernadette McDaid

VP Production

Science Channel
One Discovery Place
Silver Spring MD
USA 20910
T 240-662-4589
E Bernadette_McDaid@discovery.com

Mike McDowall

Executive Producer
IWC Media
Network House, 1 Ariel Way
London
UK W12 7SL
T +44 141 353 8494
E greta.diehl@iwcmedia.co.uk

Vivian McGrath

Executive Producer
Redback Productions
112 Wukang Road
Shanghai
China 200031
T +86 1522 195 2293
E viv@redbackproductions.tv
W www.redbackproductions.tv

Kaitlin McIntyre

Producer Discovery Communications USA

Suzanne McKenna

Head of Science,
History & Documentaries,
Content & Production
BBC Worldwide
BBC Media Centre, White City,
201 Wood Lane, Room Mc1b4
London
UK W12 7TQ
T +44 208 433 3102
E suzanne.mckenna@bbc.com
W www.bbcworldwide.com

Liz McLeod

Executive Producer Independent 32 St John Street York UK YO31 7QT T +44 777 558 4719 E LMcLeod@truenorth.tv

Kirstie McLure

Managing Director Pioneer Productions 32 Galena Road, Hammersmith London UK W6 0LT T +44 208 748 0888 F +44 208 748 7888 E kirstie.mclure@pioneertv.com W www.pioneertv.com

Michael McMahon

Executive Producer
Primitive Entertainment
585 Bloor Street West, Suite 300
Toronto ON
Canada M6G 1K5
T 416-531-3087
F 416-531-4961
E michael@primitive.net
W www.primitive.net

David McNab

Creative Director
Wide-Eyed Entertainment
32 Fitzroy Square
London
UK W1T 6EX
T +44 207 419 2058
F +44 207 419 2057
E weemail@
wide-eyedentertainment.com
W www.wide-eyedentertainment.co.uk

Subaidah Md. Top

Director, Production Division National Film Development Corporation Malaysia (FINAS) Kuala Lumpur Malaysia T+60 13 3302 593 E subaidah_m@yahoo.com

Ira Rakiz Md. Tuffile

Producer
Mataviareka
No 22-2 Jalan PJU 5/21, The Strand,
Kota Damansara
Ptealing Jaya
Malaysia 47810
T +60 12 200 7210
F +60 36 142 7019
E ira@mataviareka.com

Caitlin Meek-O'Connor

VP, Copper Club DRG 62-65 Chandos Place London UK WC2N 4HG T +44 782 783 0949 E c.meekoconnor@drg.tv

Vinita Mehta, Ph.D.

Independent Producer, Writer and Psychologist Independent 2501 Calvert Street, NW, Apartment 811 Washington DC USA 20008 T 646-258-9362 E vinita.mehta@post.harvard.edu

Richard Melman

Managing Director Spring Films 47 Conduit Street London UK W1S 2YP T +44 203 327 4932 E richard.melman@springfilms.tv W www.springfilms.tv

Troy Melville

Producer/Director Move Media 2/4 Hickson Place West Hobart TAS Australia 7000 T +61 3 6231 1826 E tmelville@iprimus.com.au W www.movemedia.net.au

Malik Menai

Producer
Mosaique Films
9 rue du chateau d'eau
Paris
France 75010
T +33 1 42 71 17 90
E malik.menai@mosaique-films.com
W www.mosaique-films.com

Sumner Menchero

Assistant Director, Programming PBS Arlington VA USA 22202 T 703-739-5354 E smenchero@pbs.org W www.pbs.org

Anne Menotti

VP, Marketing and Development Rubangfilms 3 Bethesda Metro Center Bethesda MD USA 20814 T 703-593-5013 E amenotti@me.com

Eric Michel

Producer Ideacom International 300 - 1000 Amherst St Montreal QC Canada H2L 3K5 T 514-823-5678 E em@javelotmedias.com

Stéphane Millière

President
Gedeon Programmes
155 rue de Charonne
Paris
France 75011
T +33 1 55 25 59 21
F +33 1 55 25 59 00
E smilliere@gedeonprogrammes.com
W www.gedeonprogrammes.com

JC Mills

Director of Development National Geographic Channel 1145 17th Street NW Washington DC USA 20036 T 212-378-1964 E jmills@natgeotv.com

Laurent Mini

Co-Manager/Producer
La Compagnie des Taxi Brousse
98 rue Jean Pierre Timbaud
Paris
France 75011
T +33 1 40 21 59 59
F +33 1 40 21 59 79
E Imini@cie-taxibrousse.com
W www.cie-taxibrousse.com

Thierry Mino

Deputy Head of Documentaries & Acquisitions and International Co-Productions
France Télévisions
2-4 rue Marceau
Issy-les-Moulineaux
France 92130
T +33 1 56 229 191
E thierry.mino@francetv.fr

Christopher Mitchell

Managing Director OR Media 5-6 Portland Mews, Soho London UK W1F8JG T +44 207 437 1336 E alana.qilpin@ormedia.co.uk

Chi-yung Moh

Associate Professor National Taiwan Sport University 6f., No.15, Aly. 47, Ln. 458, Bei Taipei City Taiwan 104 T +886-912-579-600 E cymoh@mail.ntsu.edu.tw

Akmal Radzlan Mohd Rashid

Deputy Director, Production Division National Film Development Corporation Malaysia (FINAS) Kuala Lumpur Malaysia T +60 19 2659 303 E akmalrshd@yahoo.com

Jens Monath

Editor Department History and Society ZDF German Television ZDF-Strasse 1 Mainz Germany 55127 T +49 6131 7016733 F +49-6-1317-06876 E monath.j@zdf.de

Leila Monks

W www.zdf.de

Vice President Commercial and Current Production Zig Zag Productions 13-14 Great Sutton St London UK EC1V 0BX T +44 207 017 8755 F +44 207 017 8750 E leila.monks@zigzag.uk.com W www.zigzag.uk.com

Brent Montgomery

Executive Producer Leftfield Productions USA E brent.montgomery@ leftfieldpictures.com

Cheryl Moore

Executive Vice President and Chief Operating Officer Howard Hughes Medical Institute

John Moore

Producer
Sensible Films
1 Aberdeen Grove
Northcote VIC
Australia 3070
T +61 3 9014 7820
F +61 3 9015 3358
E john@sensiblefilms.com
W www.sensiblefilms.com

Robert Mooring

Managing Partner, Producer Golden Gate 3D 300 California Ave. Bldg 2 Treasure Island, San Francisco CA USA 94130 T 510-499-4989 E robert@gg3d.com

Bill Morgan

Managing Director JWM Productions 6930 Carroll Avenue, Suite 600 Takoma Park MD USA 20912 T 301-891-1769 E billm@jwmprods.com

John Morris

Commercial Director Atlantic Productions Brook Green House, 4 Rowan Road Hammersmith UK W6 7DU T +44 020 8735 9314 E johnm@atlanticproductions.co.uk

Frances Mary Morrison

Senior Producer CBC PO Box 500 Station A Toronto ON Canada M5W 1E6 T 416-205-6572 F 416-205-6119 E frances-m.morrison@cbc.ca W www.cbc.ca/natureofthings

Gillian Mosely

Company Director medialab 36a Lambs Conduit Street London UK WC1N 3LD T +44 795 890 5195 E gillianmosely@medialabuk.com W www.medialabuk.com

Greg Moyer

Senior Advisor KCTS 9 TV (PBS-Seattle) 401 Mercer Street Seattle WA USA 98109 T 914-275-6755 E gmoyer720@gmail.com

Head Of Business Affairs

Dinah Mueller

Terra Mater Factual Studios Wambachergasse 2 Vienna Austria 1130 T +43-1-87003-27611 F +43-1-87003-27609 E dinah.mueller@terramater.at

Mary-Ellen Mullane

Investment Manager Screen Australia Level 4, 150 William Street Woolloomooloo NSW Australia 2011 T+61 2 8113 1035 E mary-ellen.mullane@ screenaustralia.gov.au

John Murphy

President Murphy PR USA E info@murphypr.com

Tom Mustill

AGB Films Ltd

Producer/Director

Studio 013, Netil House, 1a Westgate Street London UK E8 3RL T +44 794 947 7995 E tom.mustill@gmail.com W www.agbfilms.co.uk

Debbie Myers

General Manager and EVP of Programming Science Channel One Discovery Place Silver Spring MD USA 20910 T 240-662-3097 E debbie_myers@discovery.com

Hamish Mykura

EVP and Head of International Content/London Head of Global Development National Geographic Channels International Shepherds Studios East, Richmond Way London UK W14 0DQ T +44 207 751 7700 E hamish.mykura@fox.com

Tony Neal

Discovery Labs USA T 240-221-5476 E Tony_Neal@discovery.com

Dirk Neuhoff

Head of Documentaries ARD/NDR Hugh-Greene-weg 1 Hamburg Germany 22529 T +49 4041 565207 F +49 4041 566436 E d.neuhoff@ndr.de W www.daserste.de

Stephane Nicolopoulos

Director/Producer Thelos 50 Rue Rambuteau Paris France 75003 T +33 6 18 67 86 61 E steph@thelos.tv W thelos.tv

Hendrik Niederhoff

Head of Documentaries & Factual Docutainment
ProSiebenSat.1 TV Deutschland
Medienallee 7
Unterfoehring
Germany 85774
T +49 8995 072167
E Hendrik.Niederhoff@
ProSiebenSat1.com

Neil Nightingale

Creative Director BBC Earth BBC Earth, Whiteladies Road Bristol UK BS8 2LR T +44 117 973 2211 E neil.nightingale@bbc.com

Alberta Nokes

Head of Development
Apartment 11 Productions
828 St. Catherine St., Suite 200
Montreal QC
Canada H2L 2E3
T 416-778-8015
E Alberta@apartment11.tv
W www.apartment11.tv

Lesley Norman

Independent Production Executive Independent Washington DC USA T 917-673-7518 E lesnor@aol.com

Josette D. Normandeau

President
Ideacom International
300 - 1000 Amherst St
Montreal
Canada H2L 3K5
T 514-849-6966
F 514-849-0776
E zenith@istar.ca
W www.facebook.com/
ideacominternational

Bernice Notenboom

Producer

UNBOXED MEDIA GROUP Studio 3, 131 Alexander Street Crows Nest NSW Australia 2031 T +61 4 0922 5447 F +61 2 996 7070 E liz@unboxedmedia.com.au

Carsten Oblaender

CEO Story House Media Group 2233 Wisconsin Ave NW Suite 420 Washington DC USA 20007 T 202-464-7246 E oblaender@storyhousepro.com

Andrew Ogilvie

CEO and Executive Producer
Electric Pictures
33 Canning Highway
East Fremantle WA
Australia 6158
T +61 8 9339 1133
F +61 8 9339 1183
E ao@electricpictures.com.au
W www.electricpictures.com.au

Anne OlzmannManaging Director

Albatross World Sales Schwetzinger Str. 51 Heidelberg Germany 69124 T +49 1514 0517783 F +49 6221 7152671 E anne.olzmann@ albatrossworldsales.com W www.albatrossworldsales.com

Eileen O'Neill

Group President, Discovery Network and TLC Network Discovery Communications USA

Justin Ong

Producer/Director Dos Fellas Kuala Lumpur Malaysia T +60 12 210 5657 E justin@dosfellas.com W www.dosfellas.com

Tomoyuki Osato

Senior Producer NHK 2-2-1 Jinnan, Shibuya-ku Tokyo Japan 150-8001 T +81-3-5455-2562 F +81-3-3466-2811 E osato.t-ge@nhk.or.jp

Lynn Osborne-Way, M.Ed

Content Developer/Producer and Event Facilitator Buildings That Last-Heritage Education & Media PO Box 40045, RPO Waterloo Square Waterloo ON Canada N2J 4V1 T 519-220-9230 E buildingsthatlast@gmail.com

Dr. Steve O'Shea

Auckland University of Technology New Zealand

Guy O'Sullivan

President
Proper Television
409 King Street West, Suite 201
Toronto ON
Canada M5V 1K1
T 416-598-2500
F 416-598-2550
E erika@propertelevision.com
W www.propertelevision.com

Howard T. Owens

President National Geographic Channels 1145 17th Street NW Washington DC USA 20036 E HOwens@natgeotv.com

Charlie Parsons

Vice President, Global Development and Production National Geographic Channel 1145 17th Street NW Washington DC USA 20036 T 202-912-6790 E cparsons@natgeotv.com

Jennifer Peedom Producer/Director

Viento Media 126 Perouse Road Randwick, Sydney NSW Australia 2034 T+61 4 1881 1639 F+61 2 9399 9922 E jenpeedom@mac.com W www.jenpeedom.com

Michel Pelletier

Head of Programming Explora/Radio-Canada 1400 Rene-Levesque East, Office A76-81A Montreal Canada H2L 2M2 T 514-597-3626 E michel.pelletier@radio-canada.ca W exploratv.ca

Sonya Pemberton Creative Director

Genepool Productions
15 Norma Barnett Lane
Port Melbourne VIC
Australia 3207
T +61 3 9646 6678
F +61 3 9646 6678
E sonya@genepoolproductions.com
W www.genepoolproductions.com

Caroline Percy

Commercial Manager BBC BBC Media Centre, White City, 201 Wood Lane, Room 4600 London UK W12 7TS T +44 208 752 7748 E caroline.percy@bbc.co.uk

Caroline Perez

Director of Development Destination America USA

Anne Pick

Partner and Executive Producer Real to Reel Productions 3023 Dundas Street West Toronto ON Canada M6P 1Z4 T 416-726 4046 F 416-763-1496 E annepick@r2r.ca W www.r2r.ca

Harriet Pike

Development Producer
Bearcage
PO Box 300
Civic Square ACT
Australia 2608
T +61 2 6248 8444
F +61 2 6248 8288
E harriet@bearcage.com.au
W www.bearcage.com.au

Vice President, Production

Charles Poe

Smithsonian Networks
1225 19th Street NW
Washington DC
USA 20036
T 202-261-1703
F 202-261-1730
E c.poe@smithsoniannetworks.com
W www.smithsonianchannel.com

David Poque

Tech Columnist/Host
The New York Times/NOVA scienceNOW
New York NY
USA
E mail@davidpogue.com

Elodie Polo Ackermann

Producer
Doc En Stock
79 rue du Temple
Paris
France 75003
T +33 1 44 54 25 87
E epolo@docenstock.com

Emmanuel Priou

Producer Bonne Pioche Television 188 Rue De La Roquette Paris France 75011 T +33 1 49 29 46 00

F +33 1 49 29 93 00 E priou@bonnepioche.fr W www.bonnepioche.fr

Ed Punchard

Managing Director Prospero Productions 21 Blinco Street Fremantle WA Australia 6160 T +61 8 9336 6006 F +61 8 9336 6007 E ed@prospero.com.au W www.prospero.com.au

Katie Pyne

Associate Producer Science Channel USA

Andrea Quesnelle Executive Producer

Electric Pictures
33 Canning Highway
East Fremantle WA
Australia 6158
T +61 8 9339 1133
F +61 8 9339 1183
E aq@electricpictures.com.au
W www.electricpictures.com.au

Kate Quilton

Multiplatform Commissioning Editor, Factual Channel 4 124 Horseferry Road London UK SW1P 2TX T +44 207 306 8283 E kquilton@channel4.co.uk

Elizabeth Radshaw

Hot Docs Forum and Market Director Hot Docs Canadian International Documentary Festival 110 Spadina Avenue, Suite 333 Toronto ON Canada M5V 2K4 E eradshaw@hotdocs.ca W www.hotdocs.ca

Mahan Ramos

Producer
Film Formations Pte Ltd
1003 Bukit Merah Central,
#03-09 INNO Centre
Singapore
Singapore 159836
T +65 6324 8300
F +65 6324 8200
E mahan.ramos@gmail.com

Sara Ramsden

Commissioning Editor, Specialist Factual Channel 4 124 Horseferry Road London UK SW1P 2TX T +44 207 306 8354 E sramsden@channel4.co.uk W www.4producers.co.uk

Terri Randall

Producer/Director
Randall Productions, Inc.
310 West 99th Street, #708
New York NY
USA 10025
T 212-749-9299
F 212-866-8843
E Terri@terrirandallproductions.com
W www.terrirandallproductions.com

Mohd Naguib Razak

Director General
National Film Development
Corporation Malaysia (FINAS)
Kompleks Studio Merdeka,
Jalan Hulu Kelang
Ampang
Malaysia 68000
T +60 17 873 0058
F +60 3 4104 1313
E naguibrazak@gmail.com
W www.finas.gov.my

Laetitia Recayte

Managing Director Newen Distribution 71 rue de la Victoire Paris France 75009 T +33 1 53 78 70 26 F +33 1 53 78 24 03 E recayte@newendistribution.fr

Julia Redwood

Managing Director Prospero Productions 21 Blinco Street Fremantle WA Australia 6160 T +61 8 9336 6006 F +61 8 9336 6007 E julia@prospero.com.au W www.prospero.com.au

Dominic Rees-Roberts

Researcher

Darlow Smithson Productions Shepherds Building Central, Charecroft Way London UK W14 0EE T +44 797 483 1384 E dominic.reesroberts@gmail.com W vimeo.com/DominicReesRoberts

Christine Reisen

Senior Commissioning Editor ARTE France 8 rue Marceau Issy-les-Moulineaux France 92785 cedex 9 T +33 1 55 00 72 42 F +33 1 55 00 74 08 E c-reisen@artefrance.fr W www.arte.tv

Richard Reisz

Managing Director TV6 Limited Borders Farm, Boarders Lane Ticehurst UKTN5 7LG T +44 158 020 0162 F +44 158 020 0162 E richard.reisz@tv6.co.uk W www.tv6.co.uk

Tilman Remme Creative Director

Picture Films
139 Roding Court
Emlyn Gardens London
UK W12 9UG
T +44 799 057 6606
F +44 208 743 2684
E tilman@picturefilms.tv
W www.picturefilms.tv

Vincent Renner

CFO and EVP Business Development & Strategy Story House Media Group 2233 Wisconsin Ave NW Suite 420 Washington DC USA 20007 T 202-342-1373 F 202-342-3883 E renner@storyhousepro.com

Jonathan Renouf

Executive Producer BBC BBC Media Centre, White City, 201 Wood Lane London UK W12 7TS T +44 208 008 1423 E Jonathan.Renouf@bbc.co.uk

Mark Reynolds

Director of Factual BBC Worldwide BBC Media Centre, White City, 201 Wood Lane, Room Mc1b4 London UKW12 7QT T +44 208 433 2064 E mark.reynolds@bbc.com W www.bbcworldwide.com

Maurice Ribiere

Producer
La Compagnie des Taxi Brousse
98 rue Jean Pierre Timbaud
Paris
France 75011
T +33 1 40 21 59 59
E mribiere@cie-taxibrousse.com
W www.cie-taxibrousse.com

Lynne Richardson Producer/Director

Africa Wildlife Films
P.O. Box 26693, Hout Bay
Cape Town
South Africa 7872
T +27 82 3315368
F +27 21 7124886
E lynne.awf@icon.co.za
W www.africawildlifefilms.co.za

lain Riddick

Head of Special Projects And Digital Media Darlow Smithson Productions 1st Floor, Shepherds Building Central, Charecroft Way London UK W14 0EE T +44 207 482 9602 E Jain.Riddick@darlowsmithson.com

Benjamin Ringe

SVP Development and EP NBC Universal, Media 30 Rockefeller Plaza New York NY USA 10112 T 212-664-5932 F 212-664-7355 E benjamin.ringe@nbcuni.com

Ikhwan Rivai

Producer
Wildman Pictures
Kuala Lumpur
Malaysia
T +60 16 202 8658
E ikhwan@wildmanpictures.tv
W www.wildmanpictures.tv

Ruth Roberts

Development Producer
Atlantic Productions
Brook Green House, 4 Rowan Road
Hammersmith
UK W6 7DU
T +44 020 8735 9314
E ruthr@atlanticproductions.co.uk

Emily Roe

Deputy Creative Director
Darlow Smithson Productions
1st Floor, Shepherds Building Central,
Charecroft Way,
London
UK W14 0EE
T +44 207 482 9602
E Emily.Roe@darlowsmithson.com
W www.darlowsmithson.com

Daniela Roessler

Commissioning Editor ZDF.neo ZDF-Strasse 1 Mainz Germany 55127 T+49 6131 8817792 E Roessler.D@zdf.de

Denman Rooke

Managing Director
October Films
Lymehouse Studios, 30-31 Lyme
Street, Camden
London
UK NW1 0EE
T +44 20 7284 6868
F +44 20 7284 6869
E denman_rooke@octoberfilms.co.uk
W www.octoberfilms.co.uk

Jane Root

CEO Nutopia Kirkman House, 1st Floor, 12-14 Whitfield Street London UK W1T 2RF T +44 240 338 6883 E jane@nutopia.com W www.nutopia.com

Alison Rose

Producer/Director Inigo Films 213-401 Richmond St. W Toronto ON Canada M5V 3A8 T 416-913-6389 Skype alisonerose E aer@inigofilms.com W www.inigofilms.com

Michael Rosenfeld

Head of Television and Film Howard Hughes Medical Institute 4000 Jones Bridge Road Chevy Chase MD USA 20815 T 301-215-8500 F 301-215-8775 E mrosenfeld@hhmi.org

Amanda Rothman

Director Of Development

JWM Productions 6930 Carroll Avenue, Suite 600 Takoma Park MD USA 20912 T 301-891-1769 ext. 44 E amanda.rothman@jwmprods.com

Heidi Rotter

Event Producer Realscreen 366 Adelaide St W Toronto ON Canada M5V 1R9 T 416-408-2300 E hrotter@brunico.com

David Royle

EVP, Programming and Production Smithsonian Networks 1225 19th Street NW, Suite 250 Washington DC USA 20036 T 202-261-1701 F 202-261-1730 E d.royle@smithsoniannetworks.com W www.smithsonianchannel.com

David Ruck

Producer Rubangfilms 9912 Capitol View Ave Silver Spring MD USA 20910 T 231-329-3107 E David.ruck@gmail.com

Ralf Ruckauer

Head of Sales
ZDF Enterprises
Erich-Dombrowski-Strasse 1
Mainz
Germany 55127
T +49 6131 9911610
E ralf.rueckauer@zdf-enterprises.de
W www.zdf-enterprises.de

Leesa Rumley

Head Of Development
Windfall Films
1 Underwood Row
London
UK N1 7LZ
T +44 207 251 7676
E leesa@windfallfilms.com

Jen Ruppmann Assistant Director

PBS 2100 Crystal Drive Arlington VA USA 22202 T 703-739-5033 E jaruppmann@pbs.org

Judy Rymer

Producer and Director Rymer Childs 20 Buckingham Street, Surry Hills Sydney NSW Australia 2010 T +61 2 9255 22400 F +61 2 9319 5826 E rymer@tpg.com.au

Crispin Sadler

Managing Director
Mallinson Sadler Productions
29 Lynedoch Street
Glasgow
UK G3 6EF
T +44 117 973 1935
E crispin_sadler@blueyonder.co.uk
W www.msptv.co.uk

Gabriel Sagel

Independent Director/Producer Independent O'Higgins 1701 Piso 27 Buenos Aires Argentina 1425 T +54911 5817 0360 E gabrielsagel@gmail.com

Marion Said

Associate Producer Discovery Networks International One Discovery Place Silver Spring MD USA 20910 T 240-662-6754 E Marion_Said@discovery.com

Hind Saih

Producer
Bellota Films
6 Villa du Clos de Malevart
Paris
France 75011
T +33 1 48 07 28 71
E hind-saih@bellotafilms.fr
W www.bellotafilms.fr

Pauline Saint-Hilaire

Sales and Acquisitions Manager Upside Television 33 quai de Dion Bouton Puteaux France 92800 T +33 1 58 47 9294 F +33 1 58 47 9666 E p.sh@upsidetelevision.com W www.upsidedistribution.com

Robert Salvestrin

Independent Producer Paris France T +33 6 65 51 10 11 F +33 1 55 25 59 00 E robert.salvestrin@gmail.com

Karim Samai

Co-Manager/Producer
La Compagnie des Taxi-Brousse
98 rue Jean Pierre Timbaud
Paris
France 75011
T +33 1 40 21 59 59
F +33 1 40 21 59 79
E ksamai@cie-taxibrousse.com
W www.cie-taxibrousse.com

Professor Dr. Asiah Sarji

Director UniMAP Press and Board Member of FINAS 96, Taman Pertiwi Indah, Jalan Kangr-Alor Setar, Seriab Kangar Perlis Malaysia 1000 Alternate: Kompleks Studio Merdeka, Jalan Hulu Kelang Ampang Selangor Malaysia, 68000 T +60 17 479 4131 F +60 4 977 5135 E asiah50@hotmail.com

Gen Sasaki

Executive Producer, Natural History Programs NHK 3f, 5-5 Kamiyama-cho, Shibuya-ku Tokyo

Japan 150-0047 E sasaki.g-ey@nhk.or.jp

Annette Scheurich

Executive Producer
Marco Polo Film AG
Handschuhsheimer Landstr. 73
Heidelberg
Germany 69121
T +49 6221 400780
F +49 6221 400884
E annette@marco-polo-film.de
W www.marco-polo-film.de

Simone Schillinger

Executive Producer
Story House Media Group
Michaelkirchstrasse 17-18
Berlin
Germany 10179
T +49 3028 09310
E Schillinger@storyhousepro.com

Jay Schlossberg

President, Media Central/Executive Producer, Media Central Films Media Central 11609 Brandy Hall Lane North Potomac MD USA 20878 T 301-217-0049 F 301-217-9325 E jay@mediacentral.net W www.mediacentral.net

Ricarda Schlosshan

Commissioning Editor Zdf-zeit ZDF ZDF-Strasse 1 Mainz Germany 55127 T +49 6131 7015640 E schlosshan.r@zdf.de W www.zdf.de

Philipp Schmid

Co-Production Manager, Factual BBC Worldwide BBC Media Centre, White City, 201 Wood Lane London UK W12 7TQ T +44-208-433-3563 E philipp.schmid@bbc.com

Chris Schmidt

Senior Producer NOVA/WGBH 1 Guest Street Boston MA USA 2135 T 617-300-4347 E chris_schmidt@wgbh.org

Eva Schmidt

Head of Program Development Terra Mater Factual Studios Wambachergasse 2 Vienna Austria A-1130 T +43-87003-27611 F +43-87003-27609 E eva.schmidt@terramater.at W www.terramater.com

Pascal Schmitz

Producer
Amariam Pictures
910 Imbali, 37 Mitchell Str
Johannesburg
South Africa 2198
T +27 82 5068312
F +27 86 5357334
E pascal@amariam.co.za
W www.amariampictures.com

Claudia Schreiner

Head of Programme ARD Kantstrasse 71-73 Leipzig Germany 4275 T +49 3413 007200 F +49 3413 007255 E claudia.schreiner@mdr.de W www.mdr.de

Charles Schuerhoff

Director, International Acquisitions PBS International 10 Guest Street Boston MA USA 2135 T 617-208-0743 F 617-208-0783 E chschuerhoff@pbs.org W www.pbsinternational.org

Paul Schur

Senior Director of Publicity Discovery Communications USA

Leslie Schwerin

Producer
Discovery Communications
USA
E leslieschwerin@gmail.com

Jo Sermon

Strategy and Creative Director of Factual BBC Worldwide BBC Media Centre, White City, 201 Wood Lane, Room Mc1b3 London UK W12 7TQ T +44 780 131 0955 E jo.sermon@bbc.com W www.bbcworldwide.com

Cheng-jen Shih

Professor National Taiwan University 1, Sec. 4 Roosevlt Rd. Taipei Taiwan 10671 T +886-928-486-999 F +886-2-2363-219 E shihcj@ntu.edu.tw

Hiroyuki Shirakawa

TV Director/Producer, Science Programs NHK Japan E shirakawa.h-du@nhk.or.jp

Tomoyuki Shirakawa

Senior Producer, Special Programs NHK Japan T+81-3-5455-3201 E shirakawa.t-de@nhk.or.jp

Noel Siegel

Senior Vice President, Development and Production National Geographic Channel 1145 17th Street NW Washington DC USA 20036 T 202-912-6616 E nsiegel@natgeotv.com

Kay Siering

Head Of Documentary Department Spiegel TV Ericusspitze 1 Hamburg Germany 20457 T +49 4030 108398 E kay_siering@spiegel-tv.de W www.spiegelgruppe.de

Angelika Sigl

E sigl@textundbild.de

Executive Managing Director
Text und Bild Medienproduktion & Co.
Hofkurat-diehl-str. 6b
Oberschleissheim
Germany 85764
T +49 8923 50510
F +49 8923 505111

Sanjay Singhal

Managing Director Dragonfly Productions 120 - 124 Curtain Road London UK EC2A 3SQ T +44 207 033 2303 E eleri.davies@dragonfly.tv

David Sington

Director
DOX Productions
84 Addison Gardens
London
UK W14 0DR
T +44 207 602 3094
F +44 207 602 3771
E david.sington@tvdox.com
W www.tvdox.com

Jan Skogstrom

Producer, Director Scandinavian Communication Amiralsgatan 5 Malmoe Sweden S-211 41 T +46 702107100 & +46 705107100 E jan@skogstrom.se

Richard Smith

Director
Blue Planet Productions
6 Melbourne Street, Fairlight
Sydney NSW
Australia 2094
T +61 2 9949 2814
E stegostoma@yahoo.com.au

John Smithson

Creative Director
Arrow Media
17-18 Margaret Street
London
UK W1W8RP
T +44 208 489 6300
E john.smithson@arrowmedia.com
W www.arrowmedia.com

Andrew Solomon

Head of Natural History,
History and Science
ORF
Austrian Broadcasting Corporation,
Würzburggasse 30
Vienna
Austria 1136
T +43/(1)87878-14129
F +43/(1)87878-14884
E andrew.solomon@orf.at

Nandita Solomon

Producer **Apparat** Kuala Lumpur Malaysia T+60 19 234 7317 E nansolo@gmail.com

Alexandre Soullier

Producer Bonne Pioche Television Paris France T+33 1 49 29 46 00 F+33 1 49 29 93 00 E a.soullier@bonnepioche.fr W www.bonnepioche.fr

Alexandra Stainov

Freelance Consultant Independent Paris France T+33 6 80 72 97 53 E alexandra.stainov@gmail.com

Mark Starowicz

Executive Director. Documentary Programming 205 Wellington Street West Toronto ON Canada M5V 3G7 T 416-205-8863 F 416-205-2209 E mark.starowicz@cbc.ca W www.cbc.ca/docs

Wally Start

Partner/Producer Angel Entertainment Corp 639 Main Street Saskatoon SK Canada S7H 0J8 T 306-385-6431 F 306-933-3183 E wally@angelentertainment.ca

Bo Stehmeier

Managing Director, Distribution Off The Fence Herengracht 105-107 Amsterdam Netherlands 1015 BE T+31 20 5200222 F+31 20 5200223 E han@offthefence.com

Katie Stephenson

Content Sales Manager Flame Distribution PO Box 469 Artarmon NSW Australia 1570 T+61 2 8065 4899 F +61 2 8084 8705 E kstephenson@flamedistribution.com W www.flamedistribution.com

Christiane Streckfuss

Producer Text und Bild Medienproduktion & Co. Hofkurat-diehl-str. 6b Oberschleissheim Germany 85764 T+49 8923 505122 F +49 8923 505111 E streckfuss@textundbild.de

Linda Stregger

Up Front Entertainment 49 Spadina Ave., Ste. 302 Toronto ON Canada M5V 2J1 T 416-595-5850 F 416-595-5851 E lstregger@upfront.ca W www.upfront.ca

Vice-President/Producer

Gregor Streiber

Producer werwiewas medienproduktion Strausberger Platz 18 Berlin Germany 10243 T+49 1792 171998 E gregor@werwiewas.com

Andreas Sulzer CEO, Producer

Pro Omnia Film Eiselsberggang 4 Linz Austria 4020 T +43-66439-27229 E andreas.sulzer@proomnia.tv W www.proomnia.tv

Christopher Sumpton

Producer/Director Cogent/Benger Productions 1352 Bathurst Street, Suite 201 Toronto ON Canada M5R 3H7 T 416-535-5394 F 416-535-9619 E cas@cogentbenger.com W www.cogentbenger.com

Howard Swartz

VP Development And Production Discovery Channel 10100 Santa Monica Blvd Los Angeles CA USA 90067 T 310-975-1691

E howard_swartz@discovery.com

Tony Tackaberry

CEO Lion Television 19 Fulton Street, Suite 500 New York NY USA 10038 T 212-206-8633 E tony.tackaberry@liontv.us W www.liontv.com

Daisuke Takama

Executive Producer, Special Programs 2-2-1 Jinnan, Shibuya-ku Tokyo Japan 150-8001 T+81-3-5455-2946 F +81-3-3466-2811 E takama.d-fy@nhk.or.jp W www.nhk.or.jp/english/

Steve Talley

Independent Writer, Producer, Director Waiheke Auckland New Zealand 1081 T+64 27 8492074 E talleysr22@yahoo.com

Hideki Tazuke

Head of Science Programs Division NHK 2-2-1 Jinnan, Shibuya-ku Tokyo Japan 150-8001 T+81-3-3465-1111 F+81-3-3465-4189

Michael Tear

E tazuke.h-es@nhk.or.jp

Managing Director Bearcage 16 Petrie Plaza Canberra ACT Australia 2601 T+61 2 6248 8444 F+61 2 6248 8288 E michael.tear@bearcage.com.au W www.bearcage.com.au

Marco Tempest

Cyber Illusionist Newmagic Communications, Inc. New York NY USA 10012 E tempest@newmagic.com W www.marcotempest.com

Benjamin Ternynck

Producer Kwanza 40. rue de Paris Boulogne-Billancourt France 92100 T+33 1 41 22 90 51 F+33 141 22 90 54 E bternynck@kwanza.fr W www.kwanza.fr

Carina Teutenberg

Senior Vice President ProsiebenSat.1 TV Deutschland Gutenbergstr. 3 Unterfoehring Germany 85774 T +49 8995 077929 F +49 8995 0797929 E Carina. Teutenberg@ prosiebensat1.com W www.prosiebensat1.de

Annette Tewes

Head of TV Programme History ZDF German Television ZDF-Strasse 1 Mainz Germany 55127 T +49-61-31701-3322 F +49-61-31701-5137 E tewes.a@zdf.de W www.zdf.de

Helen Thomas

Executive Producer BBC Media Centre, White City, 201 Wood Lane London **UKW127TO** T+44 208 008 5950 E helen.thomas-SCIENCE@bbc.co.uk

Niobe Thompson

Producer/Director Clearwater Documentary 9009 - 99 St. Edmonton AB Canada T6E 3V6 T 780-757-9777 F 780-665-4299 E niobe@clearwatermedia.com W www.clearwaterdoc.ca

Edwina Thring

Managing Director Wild Thring Media Todsbridge, Far Wells Road Bisley UK GL6 7AQ T +44 145 277 0224 E edwina@wildthringmedia.com

Danny Tipping

Head of Programming and Development Sky Vision 5 Station Approach Chorleywood UK WD3 5PF T +44 192 328 6886 F +44 192 328 6065 E Danny.tipping@bskyb.com W sky.com/skyvision

Lars Ronnow Torp

Executive Producer
Danish Broadcasting Corporation
Emil Holms Kanal 20
Copenhagen C
Denmark 09 99
T +45 35 20 43 83
E ltp@dr.dk

Charles Tremayne

Executive Vice-President of
Programming
Cineflix
161 Avenue Of The Americas,
14th Floor
New York NY
USA 10013
T 212-206-0461
F 212-206-1179
E ctremayne@cineflix.com

Elizabeth Trojian

Director of Development YAP Films 96 Spadina Avenue, Suite 205 Toronto ON Canada M5V 2J6 T 416-504-3662 ext: 260 F 416-504-3667 E etrojian@yapfilms.com W www.yapfilms.com

Fiona Tudor Price

Producer/Director Atomic Productions 14873 Chinguacousy Road, Cheltenham Caledon ON Canada L7C 3H6 T 416-450-1918 E fiona@atomic-productions.com

Nina Tuominen

Acquisition Executive YLE Radiokatu 5, POB 46 Helsinki, Yleisradio Finland 00024 T +358 9 1480 2401 F +358 9 1480 4191 E nina.tuominen@yle.fi W www.yle.fi

Gabriel Turkieh

Producer
Altomedia
15 Rue D'hauteville
Paris
France 75010
T +33 1 42 77 77 72
F +33 1 42 77 77 73
E g.turkieh@altomedia.com
W www.altomedia.com

Joan Ubeda

Producer Media 3.14 Diagonal 177 Barcelona Spain 8018 T +34 93 476 15 51 F +34 93 476 15 52 E jubeda@mediapro.es W www.media314.cat

Charlotte Uzu

Producer, Head of International Development Les Films d'Ici 62, Boulevard davout Paris France 75020 T +33 1 44 52 23 29 F +33 1 44 52 23 24 E charlotte.uzu@lesfilmsdici.fr W www.lesfilmsdici.fr

Amelia Vale

Freelance Producer Flat 1b, 30 Nottingham Place London UK W1U5NP T +44 207 486 7918 E ameliavale@hotmail.com

Esther Van Messel

Founder and CEO
First Hand Films
Neunbrunnenstrasse 50
Zurich
Switzerland 8050
T +41 44 312 20 60
F +41 44 312 20 80
E esther.van.messel@firsthandfilms.com
W www.firsthandfilms.com

Stefan Vaupel

Managing Editor Galileo/Head Of Science and Information/Deputy Vice President Information and Magazine ProSiebenSat.1 TV Deutschland Gutenbergstr. 1a Unterfoehring Germany 85774 E stefan.vaupel@ProSiebenSat1.com W en.prosiebensat1.com

Lara Velho

Executive Producer/Director
Terra Brasilis Filmes
Rua Das Laranjeiras,
457 Apto. 1002-a, Laranjeiras - CEP
Rio de Janeiro
Brazil 22240-005
T +55 21 78264785
F Jarayelho@terra.com.br

Thomas Veltre

Founder
The Really Interesting Picture Company
33-21 163rd Street
Flushing NY
USA 11358
T 646-797-3171
E tom.veltre@TheReallyInteresting
PictureCompany.com
W www.thereallyinteresting
picturecompany.com

Werner Vennewald

Head Of Development and Non-fiction Jump-Media Arndtstrasse 16 Hamburg Germany 22085 T +49 4022 726972 F +49 4022 726972 E Werner.Vennewald@jump-medien.de W www.jumpmedien.de

Meg Villarreal

Director
US Independents
32 Cluf Bay Road
Brunswick ME
USA 4011
T 207-729-3274
E mvillarreal2@earthlink.net
W www.usindependents.com

Thomas Viner

Series Producer Arrow Media 17-18 Margaret Street London UK W1W 8RP T +44 793 913 6865 E thomas.viner@arrowmedia.com

Thomas Von Hennet

VP International Co-Production & Documentaries ProSiebenSat.1 TV Deutschland Medienallee 7 Unterfoehring Germany 85774 T +49 8995 071253 F +49 8995 0791253 E thomas.hennet@ProSiebenSat1.com W www.prosiebensat1.com

Julia Wagman

Development Coordinator Science Channel One Discovery Place Silver Spring MD USA 20910 T 240-662-2849 E Julia_Wagman@discovery.com

Melanie Wallace

Senior Series Producer NOVA/WGBH 1 Guest Street Boston MA USA 2135 T 617-300-4418 F 617-300-1003 E melanie_wallace@wgbh.org W www.pbs.org/wgbh/nova

Yuanyuan Wang

Supervising Producer
CICC
23rd Floor Huatian Plaza,
6 Xiaomachang, Haidian District
Beijing
China 100038
T +86 13 9105 80328
E wangyuanyuan@yahoo.com
W www.cicc.tv

Julian Ware

Creative Director
Darlow Smithson Productions
1st Floor, Shepherds Building Central,
Charecroft Way
London
UK W14 0EE
T +44 207 482 9602
E Julian.Ware@darlowsmithson.com
W www.darlowsmithson.com

Christine Weber

VP Production Discovery Channel One Discovery Place Silver Spring MD USA 20910 T 240-662-2651 E Chris_Weber@discovery.com

Jessica Weeman

Development Director Jackson Hole Wildlife Film Festival & Science Media Awards 240 S. Glenwood, PO Box 3940 Jackson WY USA 83001 E jessica.weeman@gmail.com

Dennis Wells

W www.jhfestival.org

Producer/Director Taglicht Media Caesarstrasse 58 Cologne Germany 50968 T+49 2213 490921 F +49 2213 490911 E dennis.wells@taglichtmedia.de W www.taglichtmedia.de

Pamela Wershofen

Responsible Editor **WDR** Ludwigstr. 11 Cologne Germany 50667 T+49 1711 988793 F+49 2212 035296 E pamela.wershofen@ wdr-mediagroup.com W wdr-mediagroup.com

Bridget Whalen-Hunnicutt

Programming and Development Independent 2034 17th Street NW Washington DC USA 20009 T 202-320-6094 E bridgetwhalen@yahoo.com

Matthew White

Owner Archive-Based Productions

Dr. Edie Widder

Co-Founder, CEO and Senior Scientist Ocean Research and Conservation Association USA

Martin Widman

Director

Deep Sea Productions Rydboholms Gard Akersberga Sweden SE-184 94 T+46 705847485 E martin@deepsea.se

Kristin Wilcox

Producer Discovery Channel One Discovery Place Silver Spring MD USA 20910 T 240-662-6165 E Kristin_Wilcox@discovery.com

Jason Williams

President JWM Productions 6930 Carroll Avenue, Suite 600 Takoma Park MD USA 20912 T 301-891-1769 E jasonw@jwmprods.com W www.jwmprods.com

Adrian Wills

General Manager, Factual **UKTV** 8th Floor, 245 Hammersmith Road London UK W6 8PW T+44 207 299 6114 F +44 207 299 5795 E adrian.wills@uktv.co.uk W www.uktv.co.uk

John Wilson

Senior Vice President and Chief TV Programming Executive Arlington VA USA 22202 T 703 -739-5155 E jfwilson@pbs.org

Bernd Wilting Managing Director Taglicht Media

Caesarstrasse 58 Cologne Germany 50968 T+49 2213 49090 F+49 2213 490911 E bernd.wilting@taglichtmedia.de

Jessica Winchell-Morsa

W www.taglichtmedia.de

Head of Production Engel Entertainment 535 Eighth Avenue, 7th Floor New York NY USA 10018 T 212-413-9200 E jessica@engelentertainment.com

Ellen Windemuth

CFO Off The Fence Herengrecht 105-107 Amsterdam Netherlands 1015 BE T+31 20 5200222 F+31 20 5200223 E ellen@offthefence.com W www.offthefence.com

Nikolaus Wisiak

Managing Director pre tv Gesellschaft für Film und Videoproduktion mbH Edelsinnstrasse 58 Vienna Austria 1120 T+43-501096420 F +43-501096423 E Nikolaus.wisiak@pretv.at W www.pretv.at

Michael Wolff

CFO

Fact+Film Hastedter Osterdeich 222 Bremen Germany 28207 T+49 4213 399492 F +49 4213 399549 E wolff@fact-film.de W www.fact-film.de

Kirk Wolfinger

President Lone Wolf 10 Cottage Rd. South Portland USA 4106 T 207-799-9500 E chris@lonewolfdg.com

Josephine Wright

Independent Australia E info@josephinewright.com

Arnaud Xainte

Producer/Distributor Illegitime Defense 111 Avenue Victor Hugo Paris France 75116 T+33 6 07 35 69 06 E xainte@illegitimedefense.com

Midori Yanagihara

Interpreter NHK Tokyo Japan E midorijon@erols.com

Shin Yasuda

Producer, International Co-Production 2-2-1 Jinnan, Shibuya-ku Tokyo Japan T+81-3-5455-2586 E yasuda.s-hq@nhk.or.jp

Simon Young

Head of Development **Darlow Smithson Productions** 1st Floor, Shepherds Building Central. Charecroft Way London UK W14 0EE T +44 207 482 9602 E Simon. Young@darlowsmithson.com W www.darlowsmithson.com

Tug Yourgrau

President Powderhouse 212 Elm Street Somerville MA USA 2144 T 617-284-2802 F 617-284-2994 E tyourgrau@powderhouse.net W www.powderhouse.net

Tian Yuan

Head of International Acquisitions and Co-Production CCTV Documentary Channel Room 438, Jingchengjiufang Hotel, No. 11 Yangfangdian Road, Haidian District Beijing China 100038 T+86 10 8824 3890 E tianyuan@cctv.com

Robert Zakin

Executive Producer, Specials Discovery Channel One Discovery Place Silver Spring MD USA 20910 T 240-662-5263 E Robert_Zakin@discovery.com

Lisa Zeff

Talent Representative N.S. Bienstock Talent Agency 250 West 57th Street, Suite 333 New York NY USA 10107 T 212-765-3040 F 212-757-6411 E lzeff@nsbtalent.com W www.nsbtalent.com

Anne Zeiser

President & CEO Azure Media 19 Midland Road Lynnfield MA USA 1940 T 781-342-5142 E azeiser@azuremedia.org W www.facebook.com/pages/ Azure-Media/371726303717

Larry Zetlin

Executive Producer
Gulliver Media Australia
PO Box 181 Albion
Brisbane QLD
Australia 4010
T+61 7 3148 8574
E larryz@gullivermedia.com.au
W www.gullivermedia.com.au

Yiqian Zhang

Project Manager, International Acquisitions and Co-Production CCTV Documentary Channel Room 438, Jingchengjiufang Hotel, No. 11 Yangfangdian Road, Haidian District Beijing China 100038 T +86 10 8824 3891 E jessica_zyq@hotmail.com

Andrea Zimmermann

Freelance Media Consultant Independent Kurfuerstenstrasse 29 Munich Germany 80801 T +49 1728 957789 E zimmermannandrea@t-online.de

Nadja Zöttl

Editor In Chief WDW Productions Rosenheimerstrasse 145 Munich Germany 81671 T +49 8945 254502 E nadja.zoettl@weltderwunder.de W www.weltderwunder.de

Adam Zuckerman

Discovery Labs USA T 240-662-3428 E Adam_Zuckerman@discovery.com

Thomas Zwiessler

General Manager Story House Media Group Michaelkirchstrasse 17-18 Berlin Germany 10179 T +49 3028 09310 E zweissler@storyhousepro.com

MEMBERS BY COMPANY

11 Television

65 Heward Ave. A103 Toronto ON Canada M4M 2T5 Kevin Healey kevin.healey@11television.com

1212 Productions

35 Bedfordbury, Covent Garden London UK WC2N 4DU W www.1212productions.co.uk Philip Armstrong-Dampier philip@1212productions.co.uk

2KTV Filmproduktions

Neumuhlen 17 Hamburg Germany 22763 W www.2ktv.de Matthias Kopfmüller Matthiask@2ktv.de Gary Krosnoff Garyk@2ktv.de

360 Degree Films

PO Box 418
Brunswick VIC
Australia 3056
W www.360degreefilms.com.au
Sally Ingleton
sally@360degreefilms.com.au

90th Parallel Productions

203 Gerrard St. E.
Toronto ON
Canada M5A 2E7
W www.90thparallel.ca
Gordon Henderson
gordon@90thparallel.ca

90th Parallel Productions

#438764 Grey Rd. 15, RR #1, Owen Sound ON Canada N4K 3N5 Michael Allder michaelallder@gmail.com

Abbild-Agentur

Neuhofstr. 41 Moenchengladbach Germany 41061 Karin Embacher Karin.Embacher@t-online.de

Academia Film Olomouc

Univerzitni 3 Olomouc Czech Republic 77900 W www.afo.cz Veronika Klusakova klusakova@afo.cz

Africa Wildlife Films

P.O. Box 26693, Hout Bay Cape Town South Africa 7872 W www.africawildlifefilms.co.za Lynne Richardson lynne.awf@icon.co.za

Agat Films & Cie/Ex Nihilo

52, Rue Jean-pierre Timbaud Paris France 75011 W www.agatfilms.com Blanche Guichou blanche.guichou@agatfilms.com

AGB Films Ltd

Rustic Porch Pilcorn Street Wedmore, Somerset UK BS28 4AN Andrew Graham-Brown agbfilms@btconnect.com

AGB Films Ltd

Studio 013, Netil House, 1a Westgate Street London UK E8 3RL W www.agbfilms.co.uk Tom Mustill tom.mustill@gmail.com

Albatross World Sales

Schwetzinger Str. 51 Heidelberg Germany 69124 W www.albatrossworldsales.com Anne Olzmann anne.olzmann@ albatrossworldsales.com

Altomedia

15 Rue D'hauteville Paris France 75010 W www.altomedia.com Gabriel Turkieh q.turkieh@altomedia.com

Amariam Pictures

910 Imbali, 37 Mitchell Str Johannesburg South Africa 2198 W www.amariampictures.com Pascal Schmitz pascal@amariam.co.za

Angel Entertainment Corp

639 Main Street Saskatoon SK Canada S7H 0J8 Wally Start wally@angelentertainment.ca

Anthro Media

Nansenstr. 19, 12047 Berlin Germany 23611 W www.anthro-media.com Volker Barth volker.barth@anthro-media.com

Apartment 11 Productions

828 St. Catherine St., Suite 200 Montreal QC Canada H2L 2E3 W www.apartment11.tv Alberta Nokes Alberta@apartment11.tv

Apparat

Kuala Lumpur Malaysia Nandita Solomon nansolo@gmail.com

Arcadia Content

Suite 301, 6454 Quinpool Road Halifax NS Canada B3L 1A9 W www.arcadiacontent.com John Wesley Chisholm jwc@arcadiatv.com Julian Marentette julian@arcadiacontent.com

Archive-Based Productions

USA Matthew White

ARD

Kantstrasse 71-73 Leipzig Germany 4275 W www.mdr.de Claudia Schreiner claudia.schreiner@mdr.de

ARD/NDR

Hugh-Greene-weg 1 Hamburg Germany 22529 W www.daserste.de Dirk Neuhoff d.neuhoff@ndr.de

Area 5, LLC

1406 C Valencia St. San Francisco CA USA 94110 Matt Chandronait matt@area5.tv

Arrow Media

17-18 Margaret Street London UK W1W 8RP W www.arrowmedia.com Tom Brisley tom.brisley@arrowmedia.com John Smithson john.smithson@arrowmedia.com Thomas Viner thomas.viner@arrowmedia.com

ARTE France

8 rue Marceau Issy-les-Moulineaux France 92785 cedex 9 W www.arte.tv Catherine Alvaresse c-alvaresse@artefrance.fr Hélène Coldefy h-coldefy@artefrance.fr Alec Herrmann a-herrmann@artefrance.fr Christine Reisen c-reisen@artefrance.fr

Artemis International

6-226 Carr Place Leederville WA Australia 6007 W www.artemisfilms.com Brian Beaton brianb@artemisfilms.com

ASKlabs Documentary Film

46 Waltham St., Ste. 303a Boston MA USA 2118 W www.asklabs.com Alberta Chu alberta@asklabs.com

Atlantic Productions

Brook Green House, 4 Rowan Road Hammersmith London UK W6 7DU Anthony Geffen anthonyg@atlanticproductions.co.uk John Morris johnm@atlanticproductions.co.uk Ruth Roberts ruthr@atlanticproductions.co.uk

Atomic Productions

14873 Chinguacousy Road, Cheltenham Caledon ON Canada L7C 3H6 Fiona Tudor Price fiona@atomic-productions.com

Auckland University of Technology

New Zealand Dr. Steve O'Shea

Australian Broadcasting Corporation

700 Harris Street Ultimo NSW Australia 2007 Karina Holden holden.karina@abc.net.au

Autentic

Grünwalder Weg 28d Oberhaching Germany 82041 W www.autentic.com Patrick Hörl p.hoerl@autentic.com

Azure Media

19 Midland Road Lynnfield MA USA 1940 W www.facebook.com/pages/ Azure-Media/371726303717 Anne Zeiser azeiser@azuremedia.org

BBC

BBC Media Centre, White City, 201 Wood Lane, Room Mc5 C4, London UK W12 7TQ Will Aslett will.aslett@bbc.co.uk

BBC

London UK Jodie Adams Jodie.adams@hotmail.co.uk Paul Cooke paul_see@live.co.uk vimeo.com/PaulCooke Eamon Hardy Eamon.hardy@bbc.co.uk

BBC

BBC Media Centre, White City,
201 Wood Lane
London
UK W12 7TQ
Marcy Cox
marcy.cox@bbc.co.uk
Sarah Gibbs
sarah.gibbs1@bbc.co.uk
Jonathan Renouf
Jonathan.Renouf@bbc.co.uk
Helen Thomas
helen.thomas-SCIENCE@bbc.co.uk

BBC

Room 6060 BBC Television Centre, Shepherds Bush London UK W12 7RJ W www.bbc.co.uk Martin Davidson martin.davidson@bbc.co.uk

BBC

BBC Media Centre, White City, 201 Wood Lane, Room 4600 London UK W12 7TS Amy Dowsett Caroline Percy caroline.percy@bbc.co.uk

BBC

BBC Television Centre, White City, Wood Lane, Room 6060 London UK W12 7RJ Cassian Harrison cassian.harrison@bbc.co.uk

BBC

BBC Scotland, 40 Pacific Quay Glasgow UK G51 1DA W www.bbc.co.uk Mark Hedgecoe mark.hedgecoe@bbc.co.uk

BBC

BBC Media Centre, Media Village, 201 Wood Lane, Mc5 D3 London UK W12 7TQ W www.bbc.co.uk/programmes/ b006mgxf Aidan Laverty aidan.laverty@bbc.co.uk

BBC Earth

BBC Earth, Whiteladies Road Bristol UK BS8 2LR Neil Nightingale neil.nightingale@bbc.com

BBC Vision Productions

BBC Media Centre, White City, 201 Wood Lane, Room Mc5 D6 London UK W12 7TQ Andrew Cohen andrew.cohen@bbc.co.uk

BBC Worldwide

1120 Ave Of The Americas New York NY USA 10036 Greg Johnson greg.johnson@bbc.com

BBC Worldwide

BBC Media Centre, White City, 201 Wood Lane, Room Mc1b4 London UK W12 7QT W www.bbcworldwide.com Suzanne McKenna suzanne.mckenna@bbc.com Mark Reynolds mark.reynolds@bbc.com

BBC Worldwide

BBC Media Centre, White City, 201 Wood Lane London UK W12 7TQ Philipp Schmid philipp.schmid@bbc.com

BBC Worldwide

BBC Media Centre, White City, 201 Wood Lane, Room Mc1b3 London UK W12 7TQ W www.bbcworldwide.com Jo Sermon jo.sermon@bbc.com

BBC Worldwide America

1120 Ave Of The Americas, 5th Fl New York NY USA 10036 Melissa Green melissa.green@bbc.com

BBC Worldwide Germany

Im Media Park 5B Cologne Germany 50670 Isabelle Helle isabelle.helle@bbc.com

Bearcage

PO Box 300 Civic Square ACT Australia 2608 W www.bearcage.com.au Harriet Pike harriet@bearcage.com.au

Bearcage

16 Petrie Plaza Canberra ACT Australia 2601 W www.bearcage.com.au Michael Tear michael.tear@bearcage.com.au

Bedlam Productions

22 D'arblay Street London UK W1F 8EQ Simon Egan rebecca@bedlamproductions.co.uk

Bellota Films

6 Villa du Clos de Malevart Paris France 75011 W www.bellotafilms.fr Hind Saih hind-saih@bellotafilms.fr

Berlin Producers

Prenzlauer Allee 36 Berlin Germany 10405 W www.berlin-producers.de Kristian Kaehler kristian.kaehler@fernsehbuero.de

Beyond Distribution

109 Reserve Road, Artarmon Sydney NSW Australia 2064 Fiona Crago fiona_crago@beyond.com.au

Beyond Distribution

41/42 Berners Street London UK W1T 3NB W www.beyond.com.au Yvonne Body yvonne_body@beyond.com.au

Beyond International

109 Reserve Road, Artarmon Sydney NSW Australia 2064 W www.beyond.com.au Mark Hamlyn mark_hamlyn@beyond.com.au

Blink Films

Biscuit Building, 10 Redchurch Street London UK E2 7DD W www.blinkfilmsuk.com Dan Chambers dan.chambers@blinkfilmsuk.com

Blue Planet Productions

6 Melbourne Street, Fairlight Sydney NSW Australia 2094 Richard Smith stegostoma@yahoo.com.au

Bonne Pioche Television

188 Rue De La Roquette Paris France 75011 W www.bonnepioche.fr Emmanuel Priou priou@bonnepioche.fr Alexandre Soullier a.soullier@bonnepioche.fr

Brilliant Red Media/ SongbirdSOS Productions

14 Hettersley Drive Ajax ON Canada L1T 1N8 W www.songbirdsos.com Joanne P. Jackson joannejackson@sympatico.ca

Buildings That Last-Heritage Education & Media

PO Box 40045, RPO Waterloo Square Waterloo ON Canada N2J 4V1 Lynn Osborne-Way, M.Ed buildingsthatlast@gmail.com

CABLEready/CableU

98 East Avenue Norwalk CT USA 6851 W www.cableready.net Steve Cheskin stevecheskin@msn.com Gary Lico gary@cableready.net

Camera Lucida Productions

4 Cité Griset Paris France 75011 W www.cameralucida.fr Antoine Bamas abamas@cameralucida.fr

Castle Pictures

39 Broadway, 3rd Floor New York NY USA 10006 Christopher Cassel Chris@castlepix.com

CBC

PO Box 500 Station A Toronto ON Canada M5W 1E6 W www.cbc.ca/natureofthings Frances Mary Morrison frances-m.morrison@cbc.ca

CBC

205 Wellington Street West Toronto ON Canada M5V 3G7 W www.cbc.ca/docs Mark Starowicz mark.starowicz@cbc.ca

CCTV Documentary Channel

Room 438, Jingchengjiufang Hotel,
No. 11 Yangfangdian Road,
Haidian District
Beijing
China 100038
Wen Han
jessica_zyq@hotmail.com
Jin Li
jessica_zyq@hotmail.com
Wen Liu
jessica_zyq@hotmail.com
Tian Yuan
tianyuan@cctv.com
Yiqian Zhang
jessica_zyq@hotmail.com

CERN

Geneva Switzerland CH-1211 W www.cern.ch Kate Kahle kate.kahle@cern.ch

Channel 4

124 Horseferry Road London UK SW1P 2TX W www.4producers.co.uk David Glover dglover@channel4.co.uk Jill Fullerton-Smith jfsmith@channel4.co.uk John Hay jhay@channel4.co.uk Kate Quilton kquilton@channel4.co.uk Sara Ramsden sramsden@channel4.co.uk

CICC

2311 Huatian Plaza, Lianhuachi East Road, Haidian District Beijing China 100038 W www.cicc.tv Weina Kong weinakong@hotmail.com Yuanyuan Wang

Cineflix

161 Avenue Of The Americas, 14th Floor New York NY USA 10013 Charles Tremayne ctremayne@cineflix.com

wangyuanyuan@yahoo.com

Cineflix

110 Spadina Avenue, Suite 400 Toronto ON Canada M5V 2K4 W www.cineflix.com Joe Houlihan jhoulihan@cineflix.com Simon Lloyd sdefrance@cineflix.com

Cineflix Productions

28-32 Britannia Street London UK WC1X 9JF W www.cineflixproductions.com Rob Carey rcarey@cineflix.com

Cineflix Rights

1st Floor, 1 Lorenzo Street London UK WC1X 9DJ W www.cineflixrights.com Chris Bonney cbonney@cineflix.com Noel Hedges nhedges@cineflix.com

Cineflix Rights

110 Spadina Avenue, Suite 400 Toronto ON Canada M5V 2K4 Lucinda Gergley-Garner Igergleygarner@cineflix.com

Clearwater Documentary

9009 - 99 St. Edmonton AB Canada T6E 3V6 W www.clearwaterdoc.ca Niobe Thompson niobe@clearwatermedia.com

Code Computer Design

259B, Jalan Bandar 12, Taman Melawati Kuala Lumpur Malaysia 53100 W ccdesign.com.my Gerard Benedict benedictgerard@gmail.com Harjit Kaur harjit37@yahoo.com

Cogent/Benger Productions

1352 Bathurst Street, Suite 201 Toronto ON Canada M5R 3H7 W www.cogentbenger.com Christopher Sumpton cas@cogentbenger.com

Collective Friction

Toronto ON Canada Jake Chirico jake.chirico@gmail.com

Cordell Jigsaw Zapruder

Sydney NSW Australia W www.cjz.com.au Michael Cordell michael@cordelljigsaw.com

Creative Differences

USA W www.creatvdiff.com Amy Briamonte abriamonte@cdtvmail.com

Crescendo Films

9 Rue Des Halles Paris France 75001 W www.crescendofilms.fr Serge Guez sguez@crescendofilms.fr

CriticalPast

12100 Sunrise Valley Drive, Suite 230-36 Reston VA USA W www.criticalpast.com Andy Erickson andy@criticalpast.com

CriticalPast

12100 Sunrise Valley Drive, Box E-230-16 Reston VA USA 20191 W www.criticalpast.com Jim Erickson Nepomuceno jim@criticalpast.com

CTV, EPI, Discovery Channel Canada

9 Channel Nine Court Scarborough ON Canada M1S 4B5 W www.exploration.ca Tony Leadman tony.leadman@ctv.ca

Danish Broadcasting Corporation

Emil Holms Kanal 20 Copenhagen C Denmark 09 99 Lars Ronnow Torp Itp@dr.dk

Darlow Smithson Productions

1st Floor, Shepherds Building Central, Charecroft Way London UKW140EE W www.darlowsmithson.com Ben Bowie Ben.Bowie@darlowsmithson.com

Lucy King kinglucyann@gmail.com Dominic Rees-Roberts

dominic.reesroberts@amail.com vimeo.com/DominicReesRoberts Iain Riddick

lain.Riddick@darlowsmithson.com Emily Roe

Emily.Roe@darlowsmithson.com Julian Ware

Julian.Ware@darlowsmithson.com

Simon Youna

Simon. Young@darlowsmithson.com

Dassault Systemes

10 Rue Marcel Dassault Vélisy-Villacoublay France 78946 W 3ds com Marie-Pierre Aulas mariepierre.aulas@3ds.com

Deep Sea Productions

Rydboholms Gard Akersberga Sweden SE- 18494 W www.deepsea.se Malcolm Dixelius malcolm@deepsea.se Martin Widman martin@deepsea.se

Destination America

USA Caroline Perez

DGP

75 St Margarets Road Twickenham UKTW1 2LL Dan Gold dangold@kbs.eclipse.co.uk

Discovery Channel

10100 Santa Monica Blvd 15fr Los Angeles CA USA 90067 Simon Andreae simon_andreae@discovery.com

Discovery Channel

9 Channel Nine Court Scarborough ON Canada M1S 4B5 W www.discovery.ca Lindsay Cowan Dotchison Lindsay.CowanDotchison@ bellmedia.ca Edwina Follows edwina.follows@bellmedia.ca

Discovery Channel One Discovery Place

Silver Spring MD USA 20910 John Cavenagh John_Cavanagh@discovery.com Andrew Jackson andrew_jackson@discovery.com Christine Weber Chris_Weber@discovery.com Kristin Wilcox Kristin_Wilcox@discovery.com Robert Zakin Robert_Zakin@discovery.com

Discovery Channel

10100 Santa Monica Blvd

Los Angeles CA USA 90067 **Howard Swartz**

howard_swartz@discovery.com

Discovery Channel Canada 9 Channel Nine Court

Scarborough ON Canada M1S 4B5 W www.discoverychannel.ca Fadi Issa Fadi.lssa@bellmedia.ca Paul Lewis paul.lewis@bellmedia.ca Ken MacDonald ken.macdonald@bellmedia.ca

Discovery Communications

One Discovery Place Silver Spring MD USA 20910 Wyatt Channel Wyatt_Channel@discovery.com Laurie Goldberg Brian Lavin Brian_Lavin@discovery.com Kevin Loftis Kaitlin McIntyre Eileen O'Neill Paul Schur Leslie Schwerin leslieschwerin@gmail.com

Discovery Communications

8045 Kennett Street Silver Spring MD USA 20910 Matt Jacobson matt_jacobson@discovery.com

Discovery Communications Europe

Discovery House, 566 Chiswick High Road London UK W4 5YB Adam Jacobs adam_jacobs@discovery.com

Discovery Labs

USA Jim Boda Jim_Boda@discovery.com Federico Camacho Federico_Camacho@discovery.com Tony Neal Tony_Neal@discovery.com Adam Zuckerman Adam_Zuckerman@discovery.com

Discovery Networks International

Discovery House, Building 2, Chiswick Park, 566 Chiswick High Road London UK W4 5YB Julian Bellamy Julian_bellamy@discovery.com

Discovery Networks International

One Discovery Place Silver Spring MD USA 20910 Marion Said Marion_Said@discovery.com

Discovery Studios

8045 Kennett Street Silver Spring MD USA 20912 Michael Masland Michael_masland@discovery.com

Doc En Stock

79 rue du Temple Paris France 75003 W en.docenstock.com Elodie Polo Ackermann epolo@docenstock.com **Emmanuel Leconte** eleconte@docenstock.com

docdays productions

Berlin Germany 10119 W www.docdays.de Antie Boehmert ab@docdays.de

Doclah

Viale Giuseppe Mazzini 73 Rome Italy 195 W www.doclab.it Bettina Hatami bettina.hatami@doclab.it

Docside Production

40 Rue De L'eglise Paris France 75015 Guvader Gaëlle g.guyader@docsideproduction.fr

DocumentaryTelevision.com

424 Henry St Brooklyn NY USA 11231 W www.documentarytelevision.com Peter Hamilton r2k@verizon.net

DOKfilm Fernsehproduktion

August-Bebel-Strasse 26-53 Potsdam Germany 14482 W www.dokfilm.de Dr. Jost-Arend Boesenberg j.boesenberg@dokfilm.de

Dos Fellas

Kuala Lumpur Malaysia W www.dosfellas.com Justin Ong justin@dosfellas.com

DOX Productions

84 Addison Gardens London UKW140DR W www.tvdox.com David Sington david.sington@tvdox.com

Emil Holms Kanal 1 Copenhagen Denmark 999 Thomas Houkjaer thoh@dr.dk

Dragonfly Productions

120 - 124 Curtain Road London UK EC2A 3SO Simon Dickson eleri.davies@dragonfly.tv Sanjay Singhal eleri.davies@dragonfly.tv

DRG

62-65 Chandos Place London UK WC2N 4HG Caitlin Meek-O'Connor c.meekoconnor@drg.tv

E Klinck Research

282 Napier Street Collingwood ON Canada L9Y 3T3 W www.elizabethklinck.com Elizabeth Klinck e.klinck@rogers.com

Earth-Touch Ltd

5th Floor, Fairgate House, 78 New Oxford Street London UK WC1A 1HB W www.earth-touch.com/ Susan Lee susan@earth-touch.com

Eco Media TV Produktion

Vorsetzen 53 Hamburg Germany 20459 W www.ecomediatv.de Dominic Egizzi egizzi@ecomediatv.de Stephan Lamby lamby@ecomediatv.de

Electric Pictures

33 Canning Highway
East Fremantle WA
Australia 6158
W www.electricpictures.com.au
Andrew Ogilvie
ao@electricpictures.com.au
Andrea Quesnelle
aq@electricpictures.com.au

Elevator Entertainment

Level 1, 5 Queen St Chippendale Australia 2008 W www.elevatorentertainment.com.au Kylee Ingram kylee@elevatorentertainment.com.au

Engel Entertainment

535 Eighth Avenue, 7th Floor New York NY USA 10018 Emily Harding emily@engelentertainment.com Jessica Winchell-Morsa jessica@engelentertainment.com

eOne Television

175 Bloor Street East Suite 600 North Tower Toronto ON Canada M4W3R8 W www.entertainmentonegroup.com Michael Kot mkot@entonegroup.com

Essential Media and Entertainment

Chris Hilton

Level 2, 6A Nelson Street, Annandale Sydney NSW Australia 2038 W www.essential-media.com Alan Erson alan.erson@essential-media.com

European Broadcasting Union

chris.hilton@essential-media.com

Ancienne Route 17A Grand Saconnex, Geneve Switzerland 1218 W www.eurovisiontv.com Laura Longobardi longobardi@ebu.ch

Everwild Media

262 Central Park West New York NY USA 10024 W www.everwildmedia.com Katie Carpenter krrc@everwildmedia.com

Explora/Radio-Canada

1400 Rene-Levesque East, Office A76-81A Montreal Canada H2L 2M2 W exploratv.ca/ Michel Pelletier michel.pelletier@radio-canada.ca

Fact+Film

Hastedter Osterdeich 222 Bremen Germany 28207 W www.fact-film.de Michael Wolff wolff@fact-film.de

Film Formations Pte Ltd

1003 Bukit Merah Central, #03-09 INNO Centre Singapore 159836 W www.formations.com.sg/ Danko-Stefan Desker danko@formations.com.sg Mahan Ramos mahan.ramos@gmail.com

Films à Cinq

49, rue de Rochechouart Paris France 75009 W www.filmacinq.com Emmanuel Laurent elaurent@filmsacinq.com

First Hand Films

Neunbrunnenstrasse 50 Zurich Switzerland 8050 W www.firsthandfilms.com Esther Van Messel esther.van.messel@firsthandfilms.com

FL Concepts & Co/Jukurpa Medias

Paris France 75011 W www.flconcepts.com/ Frederic Lepage fr-lepage@wanadoo.fr

77 Rue De Charonne

Flame Distribution

PO Box 469
Artarmon NSW
Australia 1570
W www. flamedistribution.com
Fiona Gilroy
fgilroy@flamedistribution.com
Katie Stephenson
kstephenson@flamedistribution.com

France 5/France Television Group

2-4 rue Marceau Issy-les-Moulineaux France 92130 Caroline Behar caroline.behar@francetv.fr

France Télévisions

2-4 rue Marceau Issy-les-Moulineaux France 92130 W www.francetelevisions.fr Ann Julienne ann.julienne@francetv.fr Thierry Mino thierry.mino@francetv.fr

FremantleMedia North America Inc.

4000 W Alameda Ave, 3rd Floor Burbank CA USA 91505 W www.originalproductions.com Thom Beers avalverde@origprod.com

Galafilm

443 St-Vincent Montreal QC Canada H2Y 3A6 W www.galafilm.com Arnie Gelbart agelbart@galafilm.com

Galaxie Presse

76, rue du Faubourg St Denis Paris France 75010 W www.galaxie-presse.fr Thierry Caillibot t.caillibot@galaxie-presse.fr Romain Grumbach rgrumbach@galaxie-presse.fr

GAPC Entertainment

1550 Laperriere Avenue, Suite 102 Ottawa ON Canada K1Z 7T2 W www.gapcentertainment.com Hoda Elatawi helatawi@gapc.com

Gebrueder Beetz Filmproduktion Hamburg

Eppendorfer Weg 93a Hamburg Germany 20259 W www.gebrueder-beetz.de Ira Beetz i.beetz@gebrueder-beetz.de

Gedeon Programmes

155 rue de Charonne Paris France 75011 W www.gedeonprogrammes.com Thibaut Martin tmartin@gedeonprogrammes.com Stéphane Millière smilliere@gedeonprogrammes.com

Genepool Productions

15 Norma Barnett Lane Port Melbourne VIC Australia 3207 W www.genepoolproductions.com Sonya Pemberton sonya@genepoolproductions.com

Getty Images

101 Bayham Street London UK NW1 0AG Sofia Lennquist sofia.lennquist@gettyimages.com

Global Spark Media

34 Desbrosses Street, Suite 817 New York NY USA 10013 Anna Gecan annagecan@globalsparkmedia.com

Golden Gate 3D

300 California Ave. Bldg 2 Treasure Island, San Francisco CA USA 94130 Robert Mooring robert@qq3d.com

Graniza Polska

Grochowska 341/80 Warsaw Poland 03-822 Jacob Dammas jacob.dammas@graniza.pl

Great Light Sage Productions

47 Royal Oak Estate, Centre Road, Morningside, Sandton Johannesburg South Africa Mimi Kalinda mimik@greatlightsage.com

Gulliver Media Australia

PO Box 181 Albion Brisbane QLD Australia 4010 W www.gullivermedia.com.au Larry Zetlin larryz@gullivermedia.com.au

Handel Productions

424 rue Guy, Suite 110 Montreal QC Canada H3J 1S6 W www.handelproductions.ca Andre Barro andre@handelproductions.ca Alan Handel alan@handelproductions.ca

Hardy Pictures

Pye Barn, Moulsford Wallingford UK OX10 9JD Justin Hardy justin@hardypictures.com

Heiress Films

101 Eton Road, Lindfield Sydney NSW Australia 2070 W www.happinesscentral.com Jennifer Cummins heiressfilms@gmail.com

Heliox Films

10 Avenue De Clichy Paris France 75018 W www.heliox.fr Pierre-François Decoufle pfd@heliox.fr

History

USA Mary Donahue Mary.Donahue@aenetworks.com Julian P. Hobbs julian.hobbs@aetn.com

Hoferichter & Jacobs GmbH

Scheffelstrasse 31a Leipzig Germany 4277 Karin Leske k.leske@hoferichterjacobs.de

Hoff Productions

5900 Hollis Street, Suite O Emeryville CA USA 94608 W www.hoff.tv Michael Hoff hoff@hoff.tv

Hot Docs Canadian International Documentary Festival

110 Spadina Ávenue, Suite 333 Toronto ON Canada M5V 2K4 W www.hotdocs.ca Brett Hendrie bhendrie@hotdocs.ca Elizabeth Radshaw eradshaw@hotdocs.ca

Howard Hughes Medical Institute

4000 Jones Bridge Road Chevy Chase MD USA 20815 Lori Beane beanel@hhmi.org Sean B. Carroll carrolls@hhmi.org David Elisco eliscod@hhmi.org Sarah Goforth qoforths@hhmi.org Laura Helft, Ph.D. helftl@hhmi.org Cheryl Moore Michael Rosenfeld mrosenfeld@hhmi.org

Icon Films

3rd Floor, College House, College Green Bristol UK BS1 5SP W www.iconfilms.co.uk Harry Marshall harry.marshall@iconfilms.co.uk

Icon Films

College House, 32-36 College Green Bristol UK BS1 5SP W www.iconfilms.co.uk Laura Marshall laura.marshall@iconfilms.co.uk

Ideacom International

300 - 1000 Amherst St Montreal QC Canada H2L 3K5 W www.facebook. comideacominternational Eric Michel em@javelotmedias.com Josette D. Normandeau zenith@istar.ca

Illegitime Defense

111 Avenue Victor Hugo Paris France 75116 Arnaud Xainte xainte@illegitimedefense.com

Impossible Pictures

1st Floor, 58 Davies St London UK W1K 5JF Jonathan Drake jonathan.drake@ impossiblepictures.co.uk Steve Maher gwyn@firestep.net

INA

4 avenue de l'Europe Bry Sur Marne France 94360 W www.ina.fr Michele Gautard mgautard@ina.fr

Independent

Metzer Str. 3 10405 Berlin Berlin Germany 10405 Annette Baumeister anbaumeister@aol.com

Independent

34 Riessersee Strasse Garmisch-Partenkirchen Germany 82467 Ruth Berry ruth_wildberry@web.de

Independent

15 Bancroft Ave. Annapolis MD USA 21403 Steve Burns stevelburns@comcast.net

Independent

Singapore Tony Chow tony.chow40@gmail.com

Independent

C/O 52 Woodsome Rd London UK NW5 1RZ Jonathan Drori congress@jondrori.com

Independent

3286 SE Salmon St. Portland OR USA 97214 W www.laurafravel.com Laura Fravel laura@laurafravel.com

Independent

54 Wolfe Street Alexandria VA USA 22314 Chris Haws chris@haws.com

Independent

Obentrautstr.53 Berlin Germany 10963 W www.rudolph-herzog.de Rudolph Herzog rudolph@rudolph-herzog.de

Independent

Marin County CA USA Steven Johnson stevenberlinjohnson@gmail.com

Independent

USA Grainne Keegan grainnekeeganbyrne@gmail.com

Independent

Poynders End Hitchin UK SG4 7RX Dinah Lord dinah@dinahlord.co.uk

Independent

295 Greenwich St., 164 New York NY USA 10007 Celia Lowenstein leica.lowenstein@gmail.com

Independent

6 Rue Guenegaud Paris France 75006 Germaine McCormack-Kos germaine.kos@gmail.com

Independent

32 St John Street York UK YO31 7QT Liz McLeod LMcLeod@truenorth.tv

Independent

2501 Calvert Street, NW, Apartment 811 Washington DC USA 20008 Vinita Mehta, Ph.D. vinita.mehta@post.harvard.edu

Independent

Washington DC USA Lesley Norman lesnor@aol.com

Independent

O'Higgins 1701 Piso 27 Buenos Aires Argentina 1425 Gabriel Sagel gabrielsagel@gmail.com

Independent

Paris France Robert Salvestrin robert.salvestrin@gmail.com

Independent

Paris France Alexandra Stainov alexandra.stainov@gmail.com

Independent

Waiheke Auckland New Zealand 1081 Steve Talley talleysr22@yahoo.com

Independent

Flat 1b, 30 Nottingham Place London UK W1U5NP Amelia Vale ameliavale@hotmail.com

Independent

2034 17th Street NW Washington DC USA 20009 Bridget Whalen-Hunnicutt bridgetwhalen@yahoo.com

Independent

Australia Josephine Wright info@josephinewright.com

Independent

Kurfuerstenstrasse 29 Munich Germany 80801 Andrea Zimmermann zimmermannandrea@t-online.de

Inigo Films

213-401 Richmond St. W Toronto ON Canada M5V 3A8 W www.inigofilms.com Alison Rose aer@inigofilms.com

Interspot Film

Walter Jurmann Gasse 4 Vienna Austria 1230 Heinrich Mayer mayer@interspot.at

Intuitive Pictures

1973 Falardeau Street Montreal QC Canada H2K 2L9 W www.intuitivepictures.ca Ina Fichman ina@intuitivepictures.ca

ITN Source

200 Gray's Inn Road London UK WC1X 8XZ W www.itnsource.com Hanna Davies hanna.davies@itnsource.com

ITN Source

48 Wall Street, Suite 1100 New York NY USA 10005 Nan Halperin nan.halperin@itnsource.com

IWC Media

Network House, 1 Ariel Way London UK W12 7SL Mike McDowall greta.diehl@iwcmedia.co.uk

IWC Media

93-97 St. Georges Road Glasgow UK G3 6JA W www.iwcmedia.co.uk Ross Harper ross.harper@iwcmedia.co.uk

Jackson Hole Wildlife Film Festival & Science Media Awards

240 S. Glenwood, PO Box 3940 Jackson WY USA 83001 W www.jhfestival.org Jessica Weeman jessica.weeman@gmail.com

JDR Screen

Adelaide Studios, 226 Fullarton Road Glenside SA Australia 5065 Julia De Roeper julia@jdrscreen.com

JKJ-TV International

43 Merrylynn Dr. Richmond Hill ON Canada L4C 5B2 Wally Longul wlongul@rogers.com

Jump-Media

Arndtstrasse 16 Hamburg Germany 22085 W www.jumpmedien.de Werner Vennewald Werner.Vennewald@jump-medien.de

Jumpstart Productions

USA Darrell Fetty jddt@sbcglobal.net

JWM Productions

6930 Carroll Avenue, Suite 600
Takoma Park MD
USA 20912
W www.jwmprods.com
Bill Morgan
billm@jwmprods.com
Amanda Rothman
amanda.rothman@jwmprods.com
Jason Williams
jasonw@jwmprods.com

KCTS 9 TV (PBS-Seattle)

401 Mercer Street Seattle WA USA 98109 Greg Moyer gmoyer720@gmail.com

Kwanza

40, rue de Paris Boulogne-Billancourt France 92100 W www.kwanza.fr Benjamin Ternynck bternynck@kwanza.fr

La Compagnie des Taxi Brousse

98 rue Jean Pierre Timbaud Paris France 75011 W www.cie-taxibrousse.com Laurent Mini Imini@cie-taxibrousse.com Maurice Ribiere mribiere@cie-taxibrousse.com Karim Samai ksamai@cie-taxibrousse.com

Lagardere Entertainment Rights

24 quai Alphonse le Gallo Boulogne Billancourt Cedex France 92513 W www.le-rights.com Eleonore de Prunele eleonore.deprunele@le-rights.com

Leftfield Productions

USA Brent Montgomery brent.montgomery@ leftfieldpictures.com

Leonardo Film

Gottorpstr. 20 Oldenburg Germany 26122 W www.leonardofilm.de Elmar Bartlmae elmar@leonardofilm.de

Les Films d'Ici

62, Boulevard davout Paris France 75020 W www.lesfilmsdici.fr Charlotte Uzu charlotte.uzu@lesfilmsdici.fr

LIC China

Gymnasium, National Sports Ctr., 1 An'ding Rd., Chaoyang Dist. Beijing China 100029 Shihui Cheng shihuicheng@lic-bcbc.com Luyue Jing laura@lic-bcbc.com

Lillavision

3rd Floor Biscuit Building, 10 Redchurch Street London UK E27DD W www.lillavision.com Lilla Hurst lilla@lillavision.com

Lion Television

26 Paddenswick Road London UK W6 0UB W www.liontv.co.uk Richard Bradley richard.bradley@liontv.co.uk Nick Catliff Nick.catliff@liontv.co.uk Tessa James tessa.james@liontv.co.uk

Lion Television

19 Fulton Street, Suite 500 New York NY USA 10038 W www.liontv.com Tony Tackaberry tony.tackaberry@liontv.us

Lone Wolf

10 Cottage Rd. South Portland USA 4106 Chris Bailey info@lonewolfdg.com Kirk Wolfinger chris@lonewolfdg.com

Looking Glass International

499 Dundas Street St Andrews Beach VIC Australia 3941 W www.lookingglassint.com Nha-uyen Chau nha-uyen@lookingglassint.com

Lumiere Media

USA Frederic Lumiere frederic@lumieremedia.com

MacGillivray Freeman Films

P.O. Box 205
Laguna Beach CA
USA 92652
Patty Collins
pcollins@macfreefilms.com
Shaun MacGillivray
smacgillivray@macfreefilms.com

MagoFilms

12 Warralong Crescent Coolbinia, Perth WA Australia 6050 W www.magofilms.com.au Marian Bartsch marian@magofilms.com.au

Mallinson Sadler Productions

29 Lynedoch Street Glasgow UK G3 6EF W www.msptv.co.uk Crispin Sadler crispin_sadler@blueyonder.co.uk

Marco Polo Film AG

Handschuhsheimer Landstr. 73 Heidelberg Germany 69121 W www.marco-polo-film.de Annette Scheurich annette@marco-polo-film.de

Mataviareka

No 22-2 Jalan PJU 5/21, The Strand, Kota Damansara Ptealing Jaya Malaysia 47810 Ira Rakiz Md. Tuffile ira@mataviareka.com

Matter of Fact Media

258 Wallace Avenue, Suite 104 Toronto ON Canada M6P 3M9 W www.matteroffactmedia.com Vanessa Dylyn Vanessa@matteroffactmedia.com

MDR

Kantstrasse 71-73 Leipzig Germany 4275 Ulrich Brochhagen ulrich.brochhagen@mdr.de

Media 3.14

Diagonal 177 Barcelona Spain 8018 W www.media314.cat Joan Ubeda jubeda@mediapro.es

Media Central

11609 Brandy Hall Lane North Potomac MD USA 20878 W www.mediacentral.net Jay Schlossberg jay@mediacentral.net

medialab

36a Lambs Conduit Street London UK WC1N 3LD W www.medialabuk.com Gillian Mosely gillianmosely@medialabuk.com

Merit Motion Pictures

248 Princess Street
Winnipeg MB
Canada R3B 1M2
W www.meritmotionpictures.com
Erna Buffie
ebuffie@mymts.net
Merit Jensen Carr
merit@meritmotionpictures.com

Ministry of Information, Communication and Culture Malaysia

Kuala Lumpur Malaysia Ab. Ghaffar A. Tambi ghaffar@kpkk.gov.my

Mosaique Films

9 rue du chateau d'eau Paris France 75010 W www.mosaique-films.com Malik Menai malik.menai@mosaique-films.com

Move Media

2/4 Hickson Place West Hobart TAS Australia 7000 W www.movemedia.net.au Troy Melville tmelville@iprimus.com.au

Murphy PR

USA John Murphy info@murphypr.com

N.S. Bienstock Talent Agency

250 West 57th Street, Suite 333 New York NY USA 10107 W www.nsbtalent.com Lisa Zeff Izeff@nsbtalent.com

NASA's Goddard Space Flight Center

USA Dr. James Garvin

National Endowment for the Humanities

USA Karen Kenton Kkenton@neh.gov

National Film Development Corporation Malaysia (FINAS)

Kuala Lumpur Malaysia Muhamad Rizal Mat Yasin rizfinas@gmail.com Subaidah Md. Top subaidah_m@yahoo.com Akmal Radzlan Mohd Rashid akmalrshd@yahoo.com

National Film Development Corporation Malaysia (FINAS)

Kompleks Studio Merdeka, Jalan Hulu Kelang Ampang Malaysia 68000 W www.finas.gov.my Mohd Naguib Razak naguibrazak@gmail.com

National Film Development Corporation Malaysia (FINAS) and University Malaysia Perlis (UniMAP)

96, Taman Pertiwi Indah,
Jalan Kangr-Alor Setar, Seriab
Kangar Perlis
Malaysia 1000
Alternate: Kompleks Studio Merdeka,
Jalan Hulu Kelang
Ampang Selangor
Malaysia, 68000
Professor Dr. Asiah Sarji
asiah50@hotmail.com

National Geographic Channel

1145 17th Street NW Washington DC USA 20036 W www.natgeotv.com Allan Butler AButler@natgeotv.com Madeleine Carter mcarter@natgeotv.com Michael Cascio MCascio@natgeotv.com Germaine Deagan Sweet Gdeagan@natgeotv.com Michael Mavretic mmavretic@natgeotv.com JC Mills jmills@natgeotv.com Charlie Parsons cparsons@natgeotv.com Noel Sieael nsiegel@natgeotv.com

National Geographic Channels

1145 17th Street NW Washington DC USA 20036 Janet Han Vissering jvissering@natgeotv.com David Lyle dlyle@natgeotv.com Howard T. Owens HOwens@natgeotv.com

National Geographic Channels International

Shepherds Studios East, Richmond Way London UK W14 0DQ Hannah Demidowicz hannah.demidowicz@fox.com Hamish Mykura hamish.mykura@fox.com

National Geographic Channels International

1145 17th Street NW Washington DC USA 20036 W channel.nationalgeographic.com Stephen Hunter shunter@natgeotv.com

National Geographic Television

1145 17th Street NW Washington DC USA 20036 W channel.nationalgeographic.com Karen Bass karenbass8@gmail.com Pamela Caragol Wells pwells@ngs.org Caroline Christopher cchristo@ngs.org Maryanne Culpepper mculpepp@ngs.org Jerry Decker jdecker@ngs.org Eleanor Grant egrant@ngs.org Jared Lipworth jlipworth@ngs.org Debbie London dlondon@ngs.org Geoff Luck Gluck@ngs.org

National Science Foundation

4201 Wilson Boulevard, Suite 885 Arlington VA USA 22230 W www.nsf.gov Valentine Kass vkass@nsf.gov

National Science Museum of Japan

Tokyo Japan Dr. Tsunemi Kubodera kubodera@kahaku.go.jp

National Taiwan Sport University

6f., No.15, Aly. 47, Ln. 458, Bei Taipei City Taiwan 104 Chi-yung Moh cymoh@mail.ntsu.edu.tw

National Taiwan University

1, Sec. 4 Roosevlt Rd. Taipei Taiwan 10671 Cheng-jen Shih shihcj@ntu.edu.tw

NBC Peacock Productions

30 Rockefeller Plaza New York NY USA 10112 Cara Biega cara.biega@nbcuni.com

NBC Universal, Media

30 Rockefeller Plaza New York NY USA 10112 Benjamin Ringe benjamin.ringe@nbcuni.com

NET Television (PBS)

1800 North 33rd Street Lincoln NE USA 68503 W netnebraska.org Gary Hochman ghochman1@unl.edu

Newen

TELFRANCE, 71 rue de la Victoire Paris France 75009 W www.telfrance.com Christine Le Goff legoff@telfrance.fr

Newen Distribution

71 rue de la Victoire Paris France 75009 Laetitia Recayte recayte@newendistribution.fr

Newmagic Communications, Inc.

New York NY USA 10012 W www.marcotempest.com Marco Tempest tempest@newmagic.com

NHK

Japan Tatsuhiro Beniko beniko.t-fy@nhk.or.jp Haruna Kimura kimura.h-ia@nhk.or.jp Hiroyuki Shirakawa shirakawa.h-du@nhk.or.jp Tomoyuki Shirakawa shirakawa.t-de@nhk.or.jp Midori Yanagihara midorijon@erols.com

NHK

2-2-1 Jinnan, Shibuya-ku Tokyo Japan 150-8001 W www.nhk.or.jp/english/ Sayumi Horie horie.s-gg@nhk.or.jp Kazuhiro Kitano kitano.k-fy@nhk.or.jp Tomoyuki Osato osato.t-ge@nhk.or.jp Daisuke Takama takama.d-fy@nhk.or.jp Hideki Tazuke tazuke.h-es@nhk.or.jp Shin Yasuda yasuda.s-hq@nhk.or.jp

NHK

3f, 5-5 Kamiyama-cho, Shibuya-ku Tokyo Japan 150-0047 Gen Sasaki sasaki.g-ey@nhk.or.jp

NHK Enterprises

3f, 5-5 Kamiyama-cho, Shibuya-ku Tokyo Japan 150-0047 W www.nhk-ep.co.jp/en/index.html Takahiro Hamano hamano-ta@nhk-ep.co.jp Hiromichi Iwasaki iwasaki.h-fe@nhk.or.jp

NHNZ

5 Melville Street
Dunedin
New Zealand 9016
W www.nhnzmovingimages.com
W www.nhnz.tv
Caroline Cook
ccook@nhnz.tv
Phil Fairclough
philnhnz@gmail.com

NHNZ

4411 Oliver Street Hyattsville MD USA 20781 Shera Jenne sjenne@nhnz.tv

Nilaya Productions

34 Boulevard Des Italiens Paris France 75009 Patricia Boutinard Rouelle p.boutinardouelle@nilaya.fr

Northern Pictures

Level 1, Building 17 Entertainment Quarter, 122 Lang Road Moore Park NSW Australia 2021 W www.northernpictures.com.au Sue Clothier sue.clothier@northernpictures.com.au

Northern Sky Entertainment

508 Riverside Drive Toronto ON Canada M6S 4B5 W www.northernskyentertainment.ca Wayne Abbott wayne@northernsky.tv

NOVA/WGBH

1 Guest Street
Boston MA
USA 2135
W www.pbs.org/wgbh/nova/
Paula S. Apsell
psa@wgbh.org
Julia Cort
julia_cort@wgbh.org
Evan Hadingham
evan_hadingham@wgbh.org
Chris Schmidt
chris_schmidt@wgbh.org
Melanie Wallace

Nutopia

Kirkman House, 1st Floor, 12-14 Whitfield Street London UK W1T 2RF W www.nutopia.com Ben Goold ben@nutopia.com Jane Root jane@nutopia.com

melanie_wallace@wgbh.org

Ocean Research and Conservation Association

USA Dr. Edie Widder

October Films

Lymehouse Studios, 30-31 Lyme Street, Camden London UK NW1 0EE W www.octoberfilms.co.uk Denman Rooke denman_rooke@octoberfilms.co.uk

Off The Fence

Herengracht 105-107 Amsterdam Netherlands 1015 BE W www.offthefence.com Bo Stehmeier han@offthefence.com Ellen Windemuth ellen@offthefence.com

OR Media

5-6 Portland Mews, Soho London UK W1F8JG Christopher Mitchell alana.gilpin@ormedia.co.uk

ORF

Austrian Broadcasting Corporation, Würzburggasse 30 Vienna Austria 1136 David Albareda davidalbareda@hotmail.com Andrew Solomon andrew.solomon@orf.at

Oxford Scientific Films 21-22 Warwick Street

London

UK W1B 5NE W www.oxfordscientificfilms.tv Clare Birks cbirks@oxfordscientificfilms.tv Peter Collins pcollins@oxfordscientificfilms.tv Alice Keens-Soper aliceks@oxfordscientificfilms.tv

Partners in Motion

3701 Hastings Street, Suite 206 Burnaby BC Canada S4T 1E9 W www.partnersinmotion.com Ron Goetz rgoetz@partnersinmotion.com

Passport to Knowledge/GHSPi

27 Washington Valley Road Morristown NJ USA 7960 Geoff Haines-Stiles ghs@passporttoknowledge.com

PBS

Arlington VA USA 22202 W www.pbs.org Bill Gardner wbgardner@pbs.org Laura Gordon legordon@pbs.org Beth Hoppe bchoppe@pbs.org Cara Liebenson cliebenson@pbs.org Sumner Menchero smenchero@pbs.org Jen Ruppmann jaruppmann@pbs.org John Wilson jfwilson@pbs.org

2100 Crystal Drive

PBS International

10 Guest Street
Boston MA
USA 2135
W www.pbsinternational.org
Anna Alvord
agalvord@pbs.org
Nanci Church
nbchurch@pbs.org
Tom Koch
jtkoch@pbs.org
Betsy LeBlanc
bkleblanc@pbs.org
Charles Schuerhoff
chschuerhoff@pbs.org

Periskope

33 Richmond Rd Oxford UK OX1 2JJ W www.periskope.tv Michael Barnes barnesmichael@btinternet.com

Picture Films

139 Roding Court Emlyn Gardens London UK W12 9UG W www.picturefilms.tv Tilman Remme tilman@picturefilms.tv

Pioneer Productions

32 Galena Road, Hammersmith London UK W6 0LT W www.pioneertv.com Jeremy Dear jeremy.dear@pioneertv.com Stuart Carter stuart.carter@pioneertv.com Kathryn Johnson kathryn.johnson@pioneertv.com Kirstie McLure kirstie.mclure@pioneertv.com

Pixeldust Studios

4350 East West Hwy. Suite 350 Bethesda MD USA 20814 W www.pixeldust.tv Elizabeth Andrade elizabeth@pixeldust.tv

PMA Productions

1617 Selkirk Ave. Montreal QC Canada H3H 1C7 W www.pmaproductions.com Kenneth Hirsch khirsch@pmaproductions.com

Point du Jour International

23 Rue De Cronstadt Paris France 75015 Luc Martin-Gousset I.martingousset@pointdujour.fr

Powderhouse

212 Elm Street Somerville MA USA 2144 W www.powderhouse.net Tug Yourgrau tyourgrau@powderhouse.net

pre tv Gesellschaft für Film und Videoproduktion mbH

Edelsinnstrasse 58 Vienna Austria 1120 W www.pretv.at Heinz Leger heinz.leger@pretv.at Nikolaus Wisiak Nikolaus.wisiak@pretv.at

Primitive Entertainment

585 Bloor Street West, Suite 300 Toronto ON Canada M6G 1K5 W www.primitive.net Michael McMahon michael@primitive.net

Pro Omnia Film

Eiselsberggang 4 Linz Austria 4020 W www.proomnia.tv Andreas Sulzer andreas.sulzer@proomnia.tv

Productions Nova Media

34, Gamble Est Bureau 201 Rouyn-Noranda Canada J9X 3B7 W productionsnovamedia.com Yves Lafontaine ylafontaine@ productionsnovamedia.com

Program 33

33 Rue Trousseau Paris France 75011 W www.program33.com Fabrice Coat f.coat@program33.com

Proper Television

409 King Street West, Suite 201 Toronto ON Canada M5V1K1 W www.propertelevison.com Cathie James cathie@propertelevision.com Guy O'Sullivan

ProSiebenSat.1 TV Deutschland

erika@propertelevision.com

Medienallee 7 Unterfoehring Germany 85774 W www.prosiebensat1.com Hendrik Niederhoff Hendrik.Niederhoff@ ProSiebenSat1.com Thomas Von Hennet thomas.hennet@ProSiebenSat1.com

ProSiebenSat.1 TV Deutschland

Gutenbergstr. 1a Unterfoehring Germany 85774 W en.prosiebensat1.com Stefan Vaupel stefan.vaupel@ProSiebenSat1.com

ProsiebenSat.1 TV Deutschland

Gutenbergstr. 3 Unterfoehring Germany 85774 W www.prosiebensat1.de Carina Teutenberg Carina.Teutenberg@prosiebensat1.com

Prospero Productions

21 Blinco Street Fremantle WA Australia 6160 W www.prospero.com.au Ed Punchard ed@prospero.com.au Julia Redwood julia@prospero.com.au

Providence Pictures

60 Eddy Street
Providence RI
USA 2903
W www.providencepictures.com
Gary Glassman
gary@providencepictures.com

Proximity Films

229 Booth Av Toronto ON Canada M4M 2M7 W proximityfilms.ca Howard Fraiberg howard@proximityfilms.ca

Rack Focus Films

Kuala Lumpur Malaysia Yazid Ahmad yazid@rackfocusfilms.com.my

RAI

Via Annia Faustina 1 Rome Italy 151 Barbara Gallavotti barbara.gallavotti@gmail.com

Randall Productions, Inc. 310 West 99th Street, #708

New York NY USA 10025 W www.terrirandallproductions.com Terri Randall

Terri@terrirandallproductions.com

Raw

Third Floor, 13-21 Curtain Road London UK EC2A 3LT Dimitri Doganis simone@raw.co.uk

Real to Reel Productions

3023 Dundas Street West Toronto ON Canada M6P 1Z4 W www.r2r.ca Anne Pick annepick@r2r.ca

Realscreen

366 Adelaide St W
Toronto ON
Canada M5V 1R9
Kelly Anderson
kanderson@brunico.com
Claire Macdonald
cmacdonald@brunico.com
Heidi Rotter
hrotter@brunico.com

Redback Productions

112 Wukang Road Shanghai China 200031 W www.redbackproductions.tv Vivian McGrath viv@redbackproductions.tv

RedSiesta Films

8 Wolseley Avenue, Wimbledon Park London UK SW19 8BQ Vijay Mavjee vijay@redsiestafilms.tv

Renegade Pictures

Renegade Pictures, Unit 2b 6 Erskine Road London UK NW3 3AJ Alan Hayling alan.hayling@renegadepictures.tv

Rock Shrimp Productions

345 Hudson Street, Suite 13003A New York NY USA 10014 Véronique Bernard

VBernard@rockshrimproductions.com

Rock Yenta Productions

290 Westmoreland Avenue Toronto ON Canada M6H 3A5 Charlotte Engel rockyenta@gmail.com

RTBF

52, Reyers Boulevard - Local 2c54 Brussels Belgium 1044 W www.matieregrise.tv Patrice Goldberg pag@rtbf.be

Rubangfilms

3 Bethesda Metro Center Bethesda MD USA 20814 Anne Menotti amenotti@me.com

Rubangfilms

9912 Capitol View Ave Silver Spring MD USA 20910 David Ruck David.ruck@gmail.com

Rymer Childs

20 Buckingham Street, Surry Hills Sydney NSW Australia 2010 Judy Rymer rymer@tpg.com.au

S4C

S4C Doc Fictoria Caernarfon UK LL55 1TH Llion Iwan Ilion.iwan@s4c.co.uk

Saint Thomas Productions

Village D'entreprises Saint Henri, Rue Anne Gacon- Bat 302 Marseille France 13016 W www.saint-thomas.net Bertrand Loyer b.loyer@saint-thomas.net

Santa Fe Productions

1100 Annie Street West Austin TX USA 78704 Lennlee Keep lennlee@santafeproductions.com

Scandinavian Communication

Amiralsgatan 5 Malmoe Sweden S-211 41 Jan Skogstrom jan@skogstrom.se

Science Channel

One Discovery Place Silver Spring MD USA 20910 Dexter Cole Dexter_Cole@discovery.com Rocky Collins Rocky_Collins@discovery.com Lindsay Foster Laurie Haughey Laurie_Haughey@discovery.com Brad Kohlenstein brad_kohlenstein@discovery.com Neil Laird Neil_Laird@discovery.com Bernadette McDaid Bernadette_McDaid@discovery.com Debbie Myers debbie_myers@discovery.com Katie Pyne Julia Wagman Julia_Wagman@discovery.com

Scorpion TV

3a, 140 Gray's Inn Road London UK WC1X 8AX David Cornwall david@scorpiontv.com

Screen Australia

Level 4, 150 William Street Woolloomooloo NSW Australia 2011 Mary-Ellen Mullane mary-ellen.mullane@ screenaustralia.gov.au

SD Cinematografica

Lungotevere Delle Navi, 19 Rome Italy 196 W www.sdcinematografica.it Roberto Dall'angelo roberto.dallangelo@ sdcinematografica.it

SeaLight Pictures

17 Tralee Ave Killarney Heights NSW Australia 2087 W www.sealightpictures.com Adam Geiger ageiger@sealightpictures.com

Sensible Films

1 Aberdeen Grove Northcote VIC Australia 3070 W www.sensiblefilms.com John Moore john@sensiblefilms.com

Serendipity Productions

7/41-45 Wallis St Woollahra NSW Australia 2025 Margie Bryant margieabr@ozemail.com.au

Shih Hsin University

#1, Lane 17, Mu-cha Road, Sec. 1 Taipei Taiwan 116 W www.shu.edu.tw/index.asp James Chieh Hsiung chueh426@gmail.com

Shih Hsin University

#16, Lane 23, Hansheng E. Rd., Banqiao Dist. New Taipei City Taiwan 220 W www.shu.edu.tw/index.asp Yu-Chen Chueh chueh426@gmail.com

Sitting In Pictures

1 Syed Alwi Road, Song Lin Building #04-04 Singapore 207628 W www.sittinginpictures.com Soh Kiak Chang sohkiak@sittinginpictures.com

Sky Vision

5 Station Approach Chorleywood UK WD3 5PF W sky.com/skyvision Carl Hall Danny Tipping Danny.tipping@bskyb.com

Smithsonian Networks 1225 19th Street NW

Washington DC USA 20036 W www.smithsonianchannel.com Chris Hoelzl c.hoelzl@smithsoniannetworks.com Charles Poe c.poe@smithsoniannetworks.com David Royle d.royle@smithsoniannetworks.com

Société Radio-Canada 1400 East Rene Levesque

Montreal QC Canada H2L 2M2 W radio-canada.ca/decouverte Helene Leroux helene.leroux@radio-canada.ca

Special Broadcasting Service (SBS)

Locked Bag 028 Crows Nest NSW Australia 1585 W www.sbs.com.au John Godfrey john.godfrey@sbs.com.au Joseph Maxwell joseph.maxwell@sbs.com.au

Special Broadcasting Service (SBS)

14 Herbert Street Artarmon Australia 2064 Tony Iffland tony.iffland@sbs.com.au

Special Broadcasting Service (SBS)

28 Second Avenue, Lane Cove Sydney NSW Australia 2066 Daryl Karp karp.daryl@gmail.com

Spiegel TV

1202 National Press Building Washington DC USA Karin Assmann kbassmann@yahoo.com

Spiegel TV

Ericusspitze 1
Hamburg
Germany 20457
W www.spiegelgruppe.de
Marc Brasse
marc_brasse@spiegel-tv.de
Kirsten Hoehne
kirsten_hoehne@spiegel-tv.de
Kay Siering
kay_siering@spiegel-tv.de

Spiegel TV Geschichte + Wissen

Grünwalder Weg 28d Oberhaching Germany 82041 W www.spiegel-geschichte.tv/ www.spiegel-wissen.tv Johannes Everding johannes_everding@spiegelgeschichte.tv

Spring Films

47 Conduit Street London UK W1S 2YP W www.springfilms.tv Richard Melman richard.melman@springfilms.tv

StarSapphire Productions

37 Nestor Avenue Bardon QLD Australia 4065 W www.starsapphireproductions.com Grania Kelly graniakelly@optusnet.com.au

Stony Brook Films

1002 Stony Brook Road Brewster MA USA 2631 Paul Gasek sbfilms@comcast.net

Stornoway Productions

1200 Bay Street, Suite 304
Toronto ON
Canada M5R 2A5
W www.stornowayproductions.com
Criss Hajek
chajek@stornoway.com

Stornoway Productions

1200 Bay Street, Suite 1004 Toronto ON Canada M5R 2A5 W www.stornowayproductions.com Paul Kemp pkemp@stornoway.com

Story House Media Group

2233 Wisconsin Ave NW Suite 420 Washington DC USA 20007 Karim Chrobog chrobog@storyhousepro.com Genevieve Croteau genevieve@storyhousepro.com Andreas Gutzeit gutzeit@storyhousepro.com Carsten Oblaender oblaender@storyhousepro.com Vincent Renner renner@storyhousepro.com

Story House Media Group

Michaelkirchstrasse 17-18
Berlin
Germany 10179
Jens Afflerbach
afflerbach@storyhousepro.com
Konstanze Beyer
beyer@storyhousepro.com
Simone Schillinger
Schillinger@storyhousepro.com
Thomas Zwiessler
zweissler@storyhousepro.com

Story House Media Group

250 The Esplanade, Suite 129 Toronto ON Canada M5A1J2 Robyn Hutt hutt@storyhousepro.com Rachel Low low@storyhousepro.com

STV

Pacific Quay, Govan Road Glasgow UK G51 1PQ Anne Laking anne.laking@stv.tv

Sunny Side of the Doc

21bis quai Maubec La Rochelle France 17000 W www.sunnysideofthedoc.com Krishan Arora krishan@sunnysideofthedoc.com Yves Jeanneau yjeanneau@sunnysideofthedoc.com

SVT

Oxenstiernsgatan 26 Stockholm Sweden SE-10510 Henrik Ekman henrik.ekman@svt.se

Taglicht Media

Caesarstrasse 58
Cologne
Germany 50968
W www.taglichtmedia.de
Dennis Wells
dennis.wells@taglichtmedia.de
Bernd Wilting
bernd.wilting@taglichtmedia.de

TCB Media Rights

1 Kings Ride Gate, 10 Barley Mow Passage London UK TW10 5BL W www.tcbmediarights.com Paul Heaney paul.heaney@tcbmediarights.com

Terra Brasilis Filmes

Rua Das Laranjeiras, 457 Apto. 1002-a, Laranjeiras - CEP Rio de Janeiro Brazil 22240-005 Lara Velho laravelho@terra.com.br

Terra Mater Factual Studios

Wambachergasse 2 Vienna Austria 1130 Sabine Holzer sabine.holzer@terramater.at Walter Köhler monika.reisinger@terramater.at Dinah Mueller dinah.mueller@terramater.at Eva Schmidt eva.schmidt@terramater.at

Terra Mater Factual Studios

45 Western Avenue, Thorpe Village Engham, Surrey UK TW20 8QB John Kelly kelly@merlinitv.freeserve.co.uk

Terranoa

155, Rue De Charonne Paris France 75011 W www.terranoa.com Laetitia Doyle Idoyle@terranoa.com Isabelle Graziadey igraziadey@terranoa.com

Testimony Films

12 Great George Street Bristol UK B51 5RS W www.testimonyfilms.com Steve Humphries steve.humphries@testimonyfilms.com

Text und Bild Medienproduktion & Co.

Hofkurat-diehl-str. 6b Oberschleissheim Germany 85764 Angelika Sigl sigl@textundbild.de Christiane Streckfuss streckfuss@textundbild.de

The Glasgow Group

179 Douglas Avenue Toronto ON Canada M5M 1G7 W www.alankay.ca Alan Kay akay@glasgrp.com

The New York Times/ NOVA scienceNOW

New York NY USA David Pogue mail@davidpogue.com

The Project Factory

UK Kirsty Hunter kirsty@theprojectfactory.com

The Really Interesting Picture Company

33-21 163rd Street
Flushing NY
USA 11358
W www.thereallyinteresting
picturecompany.com
Thomas Veltre
tom.veltre@TheReallyInteresting
PictureCompany.com

The Weather Channel Companies

205 East 42nd Street New York NY USA 10017 W www.weather.com Mary Ellen Iwata meiwata@weather.com

Thelos

50 Rue Rambuteau Paris France 75003 W thelos.tv Stephane Nicolopoulos steph@thelos.tv

Tigress Productions

1-2 Oakfield Court,
Oakfield Road, Clifton
Bristol
UK B58 1LT
W www.tigressproductions.co.uk
Dick Colthurst
dickcolthurst@tigressproductions.co.uk

Trivalent Productions

4514 Laurel Ridge Drive Morgantown WV USA 26508 Diandra Leslie-Pelecky diandra@drdiandra.com

TV France International

5 Rue Cernuschi Paris France 75017 W www.tvfrance-intl.com Mathieu Béjot mathieu@tvfrance-intl.com

TV6 Limited

Borders Farm, Boarders Lane Ticehurst UKTN5 7LG W www.tv6.co.uk Richard Reisz richard.reisz@tv6.co.uk

TVO

2180 Yonge Street Toronto ON Canada M4T 2T1 W www.tvo.org Christine Lee clee@tvo.org

Twin Cities Public Television

172 East Fourth Street Saint Paul MN USA 55101 W www.tpt.org Joanna Baldwin Mallory jbaldwinmallory@tpt.org Richard Hudson rhudson@tpt.org

UKTV

8th Floor, 245 Hammersmith Road London UK W6 8PW W www.uktv.co.uk Adrian Wills adrian.wills@uktv.co.uk

UNBOXED MEDIA GROUP

Studio 3, 131 Alexander Street Crows Nest NSW Australia 2031 Bernice Notenboom liz@unboxedmedia.com.au

Universities Space Research Association (USRA)/Lunar and Planetary Institute (LPI)

3600 Bay Area Blvd. Houston TX USA 77058 John Blackwell Blackwell@epo.usra.edu

Up Front Entertainment

49 Spadina Ave., Ste. 302 Toronto ON Canada M5V 2J1 W www.upfront.ca Barbara Barde bbarde@upfront.ca Linda Stregger Istregger@upfront.ca

Upside Television

33 quai de Dion Bouton
Puteaux
France 92800
W www.upsidedistribution.com
W www.upsidetelevision.fr
Sebastien Deurdilly
sdeurdilly@gmail.com
Pauline Saint-Hilaire
p.sh@upsidetelevision.com

US Independents

32 Cluf Bay Road Brunswick ME USA 4011 W www.usindependents.com Meg Villarreal mvillarreal2@earthlink.net

Veriscope Pictures

212 Fayerweather Street Cambridge MA USA 2138 W www.veriscopepictures.com Daniel Levitt daniel.levitt@comcast.net

Vidicom Media GmbH & Co. KG

Schulterblatt 58 Hamburg Germany 20357 W www.vidicom-tv.com Peter Bardehle Bardehle@vidicom-tv.com

Viento Media

126 Perouse Road Randwick, Sydney NSW Australia 2034 W www.jenpeedom.com Jennifer Peedom jenpeedom@mac.com

Vulcan Productions

505 5th Ave. S, Suite 900 Seattle WA USA 98104 W www.vulcanproductions.com Bonnie Benjamin-Phariss bonnieb@vulcan.com

Wall To Wall

85 Gray's Inn Road London UK WC1X 8TX W www.walltowall.co.uk Jonathan Hewes jonathan.hewes@walltowall.co.uk

WCSFP Ltd

Australia Alison Leigh alisonleighwcsfp@me.com

WDR

Appellhofplatz 1 Cologne Germany 50667 W www.wdr.de/tv/home Claudia Heiss claudia.heiss@wdr.de Thomas Kamp thomas.kamp@wdr.de

WDR

Ludwigstr. 11 Cologne Germany 50667 W wdr-mediagroup.com Pamela Wershofen pamela.wershofen@wdr-mediagroup.com

WDW Productions

Rosenheimerstrasse 145 Munich Germany 81671 W www.weltderwunder.de Nadja Zöttl nadja.zoettl@weltderwunder.de

Wellcome Trust

215 Euston Road London UK NW1 2BE W www.wellcome.ac.uk Dr. Lisa Lazareck I.lazareck@wellcome.ac.uk

Wellcome Trust

London UK Helen Lambourne H.Lambourne@wellcome.ac.uk

werwiewas medienproduktion

Strausberger Platz 18 Berlin Germany 10243 Gregor Streiber gregor@werwiewas.com

WFTA

3939 Campbell Avenue Arlington VA USA 22206 Jeff Bieber

WGBH

Arlington VA USA 22202 Denise Dilanni denise_diianni@wgbh.org

Wide-Eyed Entertainment

32 Fitzroy Square
London
UK W1T 6EX
W www.wide-eyedentertainment.co.uk
Amy Foster
amy.foster@
wide-eyedentertainment.com
Jasper James
jj@wide-eyedentertainment.com
David McNab
weemail@
wide-eyedentertainment.com

Wild Fury

PO Box 153 Coorparoo Brisbane QLD Australia 4151 W www.wildfury.com.au Veronica Fury veronica@wildfury.com.au

Wild Fury/Absolutely Wild Visuals

Level 2A, 737, New South Head Road Rose Bay NSW Australia 2029 W www.wildfury.com.au Tina Dalton

Wild Thring Media

Todsbridge, Far Wells Road Bisley UK GL6 7AQ Edwina Thring edwina@wildthringmedia.com

bettina@wildvisuals.com.au

Wildman Pictures

Kuala Lumpur Malaysia W www.wildmanpictures.tv Ikhwan Rivai ikhwan@wildmanpictures.tv

Windfall Films

1 Underwood Row
London
UK N1 7LZ
W www.windfallfilms.com
David Dugan
dugan@windfallfilms.com
lan Duncan
ian@windfallfilms.com
Carlo Massarella
carlo@windfallfilms.com
Leesa Rumley
leesa@windfallfilms.com

Woollyworks

2645 Polk St. #307 San Francisco CA USA 94109 Adrienne Ciuffo adrienne.ciuffo@mac.com

Words Make Pictures

Granard Lodge, Putney Park Lane London UK SW15 5HU John Lynch johnlynchmedia@gmail.com

Wuhan TV

No. 677 Jian She Ave. Wuhan China Olivia Chen oriental365@163.com

YAP Films

96 Spadina Avenue, Suite 205 Toronto ON Canada M5V 2J6 W www.yapfilms.com Elliott Halpern ehalpern@yapfilms.com Elizabeth Trojian etrojian@yapfilms.com

YLE

Radiokatu 5, POB 46 Helsinki, Yleisradio Finland 00024 W www.yle.fi Nina Tuominen nina.tuominen@yle.fi

Yuzu Productions

30 Rue Colonel Delorme Montreuil France 93100 W www.yuzu-productions.com Fabrice Esteve f.esteve@yuzu-productions.com

ZDF

ZDF-Strasse 1
Mainz
Germany 55127
W www.zdf.de
Christian Dezer
dezer.c@zdf.de
Ulrike Grunewald
grunewald.u@zdf.de
Marita Huebinger
huebinger.m@zdf.de
Ricarda Schlosshan
schlosshan.r@zdf.de

ZDF Digital Medienproduktion

ZDF-Strasse 1 Mainz Germany 55127 Christoph Caron caron.c@zdf-digital.com Michael Kaschner Kaschner.M@zdf-digital.com

ZDF Enterprises

488 Madison Avenue, Suite 1100 New York NY USA 10022 Nelsa Gidney nelsa@ngidney.com

ZDF Enterprises

Erich-Dombrowski-Strasse 1 Mainz Germany 55127 W www.zdf-enterprises.de Nikolas Huelbusch nikolas.huelbusch@zdf-enterprises.de Ralf Ruckauer ralf.rueckauer@zdf-enterprises.de

ZDF German Television

ZDF-Strasse 1 Mainz Germany 55127 W www.zdf.de Klaus Heckenhahn heckenhahn.k@zdf.de Jens Monath monath.j@zdf.de Annette Tewes tewes.a@zdf.de

ZDF German Television

ZDF Strasse 1 Unterfoehring Germany 85774 W www.zdf.de Christiane Goetz-Sobel goetz-sobel.c@zdf.de

ZDF.neo

ZDF-Strasse 1 Mainz

Germany 55127 Andrea Eisel Eisel.A@zdf.de Daniela Roessler Roessler.D@zdf.de

ZDF/3sat

Sendezentrum 2 Mainz Germany 55100 W www.3sat.de Katharina Finger

Finger.K@zdf.de

ZED

42 Rue Eugène Carrière Paris France 75018 W www.zed.fr Manuel Catteau mcatteau@zed.fr

ZED

39 rue des Prairies Paris France 75020 W www.zed.fr Valerie Abita valerie.abita@zed.fr

Zig Zag Productions

13-14 Great Sutton St London UK EC1V 0BX W www.zigzag.uk.com Leila Monks leila.monks@zigzag.uk.com

Zodiak Rights

Avon House. Kensington Village, Avonmore Road London UK W14 8TS Emily Elisha emily.elisha@zodiakrights.com

Zoot Pictures

2060 Broad St. Regina SK Canada S4P1Y3 W www.zootpictures.com Leif Kaldor leif@zootpictures.com Leslea Mair leslea@zootpictures.com

MEMBERS BY COUNTRY

ARGENTINA

Independent

O'Higgins 1701 Piso 27 Buenos Aires Argentina 1425 Gabriel Sagel qabrielsagel@gmail.com

AUSTRALIA

360 Degree Films

PO Box 418 Brunswick VIC Australia 3056 W www.360degreefilms.com.au Sally Ingleton sally@360degreefilms.com.au

Artemis International

6-226 Carr Place Leederville WA Australia 6007 W www.artemisfilms.com Brian Beaton brianb@artemisfilms.com

Australian Broadcasting Corporation

700 Harris Street Ultimo NSW Australia 2007 Karina Holden holden.karina@abc.net.au

Bearcage

PO Box 300 Civic Square ACT Australia 2608 W www.bearcage.com.au Harriet Pike harriet@bearcage.com.au

Bearcage

16 Petrie Plaza Canberra ACT Australia 2601 W www.bearcage.com.au Michael Tear michael.tear@bearcage.com.au

Beyond Distribution

109 Reserve Road, Artarmon Sydney NSW Australia 2064 Fiona Crago fiona_crago@beyond.com.au

Beyond International

109 Reserve Road, Artarmon Sydney NSW Australia 2064 W www.beyond.com.au Mark Hamlyn mark_hamlyn@beyond.com.au

Blue Planet Productions

6 Melbourne Street, Fairlight Sydney NSW Australia 2094 Richard Smith stegostoma@yahoo.com.au

Cordell Jigsaw Zapruder

Sydney NSW Australia W www.cjz.com.au Michael Cordell michael@cordelljigsaw.com

Electric Pictures

33 Canning Highway
East Fremantle WA
Australia 6158
W www.electricpictures.com.au
Andrew Ogilvie
ao@electricpictures.com.au
Andrea Quesnelle
aq@electricpictures.com.au

Elevator Entertainment

Level 1, 5 Queen St Chippendale Australia 2008 W www.elevatorentertainment.com.au Kylee Ingram kylee@elevatorentertainment.com.au

Essential Media and Entertainment

Level 2, 6A Nelson Street, Annandale Sydney NSW Australia 2038 W www.essential-media.com Alan Erson alan.erson@essential-media.com Chris Hilton chris.hilton@essential-media.com

Flame Distribution

PO Box 469
Artarmon NSW
Australia 1570
W www.flamedistribution.com
Fiona Gilroy
fgilroy@flamedistribution.com
Katie Stephenson
kstephenson@flamedistribution.com

Genepool Productions

15 Norma Barnett Lane Port Melbourne VIC Australia 3207 W www.genepoolproductions.com Sonya Pemberton sonya@genepoolproductions.com

Gulliver Media Australia

PO Box 181 Albion Brisbane QLD Australia 4010 W www.gullivermedia.com.au Larry Zetlin larryz@gullivermedia.com.au

Heiress Films

101 Eton Road, Lindfield Sydney NSW Australia 2070 W www.happinesscentral.com Jennifer Cummins heiressfilms@gmail.com

Independent

Australia Josephine Wright info@josephinewright.com

JDR Screen

Adelaide Studios, 226 Fullarton Road Glenside SA Australia 5065 Julia De Roeper julia@jdrscreen.com

Looking Glass International

499 Dundas Street St Andrews Beach VIC Australia 3941 W www.lookingglassint.com Nha-uyen Chau nha-uyen@lookingglassint.com

MagoFilms

12 Warralong Crescent Coolbinia, Perth WA Australia 6050 W www.magofilms.com.au Marian Bartsch marian@magofilms.com.au

Move Media

2/4 Hickson Place West Hobart TAS Australia 7000 W www.movemedia.net.au Troy Melville tmelville@iprimus.com.au

Northern Pictures

Level 1, Building 17 Entertainment Quarter, 122 Lang Road Moore Park NSW Australia 2021 W www.northernpictures.com.au Sue Clothier sue.clothier@northernpictures.com.au

Prospero Productions

21 Blinco Street Fremantle WA Australia 6160 W www.prospero.com.au Ed Punchard ed@prospero.com.au Julia Redwood julia@prospero.com.au

Rymer Childs

20 Buckingham Street, Surry Hills Sydney NSW Australia 2010 Judy Rymer rymer@tpg.com.au

Screen Australia

Level 4, 150 William Street Woolloomooloo NSW Australia 2011 Mary-Ellen Mullane mary-ellen.mullane@ screenaustralia.gov.au

SeaLight Pictures

17 Tralee Ave Killarney Heights NSW Australia 2087 W www.sealightpictures.com Adam Geiger ageiger@sealightpictures.com

Sensible Films

1 Aberdeen Grove Northcote VIC Australia 3070 W www.sensiblefilms.com John Moore john@sensiblefilms.com

Serendipity Productions

7/41-45 Wallis St Woollahra NSW Australia 2025 Margie Bryant margieabr@ozemail.com.au

Special Broadcasting Service (SBS)

Locked Bag 028 Crows Nest NSW Australia 1585 W www.sbs.com.au John Godfrey john.godfrey@sbs.com.au Joseph Maxwell joseph.maxwell@sbs.com.au

Special Broadcasting Service (SBS)

14 Herbert Street Artarmon Australia 2064 Tony Iffland tony.iffland@sbs.com.au

Special Broadcasting Service (SBS)

28 Second Avenue, Lane Cove Sydney NSW Australia 2066 Daryl Karp karp.daryl@gmail.com

StarSapphire Productions

37 Nestor Avenue Bardon QLD Australia 4065 W www.starsapphireproductions.com Grania Kelly graniakelly@optusnet.com.au

UNBOXED MEDIA GROUP

Studio 3, 131 Alexander Street Crows Nest NSW Australia 2031 Bernice Notenboom liz@unboxedmedia.com.au

Viento Media

126 Perouse Road Randwick, Sydney NSW Australia 2034 W www.jenpeedom.com Jennifer Peedom jenpeedom@mac.com

WCSFP Ltd

Australia Alison Leigh alisonleighwcsfp@me.com

Wild Fury

PO Box 153 Coorparoo Brisbane QLD Australia 4151 W www.wildfury.com.au Veronica Fury veronica@wildfury.com.au

Wild Fury/Absolutely Wild Visuals

Level 2A, 737, New South Head Road Rose Bay NSW Australia 2029 W www.wildfury.com.au Tina Dalton bettina@wildvisuals.com.au

AUSTRIA

Interspot Film

Walter Jurmann Gasse 4 Vienna Austria 1230 Heinrich Mayer mayer@interspot.at

ORF

Austrian Broadcasting Corporation, Würzburggasse 30 Vienna Austria 1136 David Albareda davidalbareda@hotmail.com Andrew Solomon andrew.solomon@orf.at

pre tv Gesellschaft für Film und Videoproduktion mbH

Edelsinnstrasse 58 Vienna Austria 1120 W www.pretv.at Heinz Leger heinz.leger@pretv.at Nikolaus Wisiak Nikolaus.wisiak@pretv.at

Pro Omnia Film

Eiselsberggang 4 Linz Austria 4020 W www.proomnia.tv Andreas Sulzer andreas.sulzer@proomnia.tv

Terra Mater Factual Studios

Wambachergasse 2 Vienna Austria A-1130 W www.terramater.com Sabine Holzer sabine.holzer@terramater.at Walter Köhler monika.reisinger@terramater.at Dinah Mueller dinah.mueller@terramater.at Eva Schmidt eva.schmidt@terramater.at

BELGIUM

RTBF

52, Reyers Boulevard - Local 2c54 Brussels Belgium 1044 W www.matieregrise.tv Patrice Goldberg pag@rtbf.be

BRAZIL

Terra Brasilis Filmes

Rua Das Laranjeiras, 457 Apto. 1002-a, Laranjeiras - CEP Rio de Janeiro Brazil 22240-005 Lara Velho laravelho@terra.com.br

CANADA

11 Television

65 Heward Ave. A103 Toronto ON Canada M4M 2T5 Kevin Healey kevin.healey@11television.com

90th Parallel Productions

#438764 Grey Rd. 15, RR #1, Owen Sound ON Canada N4K 3N5 Michael Allder michaelallder@gmail.com

90th Parallel Productions

203 Gerrard St. E.
Toronto ON
Canada M5A 2E7
W www.90thparallel.ca
Gordon Henderson
gordon@90thparallel.ca

Angel Entertainment Corp

639 Main Street Saskatoon SK Canada S7H 0J8 Wally Start wally@angelentertainment.ca

Apartment 11 Productions

828 St. Catherine St., Suite 200 Montreal QC Canada H2L 2E3 W www.apartment11.tv Alberta Nokes Alberta@apartment11.tv

Arcadia Content

Suite 301, 6454 Quinpool Road Halifax NS Canada B3L 1A9 W www.arcadiacontent.com John Wesley Chisholm jwc@arcadiatv.com Julian Marentette julian@arcadiacontent.com

Atomic Productions

14873 Chinguacousy Road, Cheltenham Caledon ON Canada L7C 3H6 Fiona Tudor Price fiona@atomic-productions.com

Brilliant Red Media/ SongbirdSOS Productions

14 Hettersley Drive Ajax ON Canada L1T 1N8 W www.songbirdsos.com Joanne P. Jackson joannejackson@sympatico.ca

Buildings That Last-Heritage Education & Media

PO Box 40045, RPO Waterloo Square Waterloo ON Canada N2J 4V1 Lynn Osborne-Way, M.Ed buildingsthatlast@gmail.com

CBC

PO Box 500 Station A Toronto ON Canada M5W 1E6 W www.cbc.ca/natureofthings Frances Mary Morrison frances-m.morrison@cbc.ca

CBC

205 Wellington Street West Toronto ON Canada M5V 3G7 W www.cbc.ca/docs Mark Starowicz mark.starowicz@cbc.ca

Cineflix

110 Spadina Avenue, Suite 400 Toronto ON Canada M5V 2K4 W www.cineflix.com Joe Houlihan jhoulihan@cineflix.com Simon Lloyd sdefrance@cineflix.com

Cineflix Rights

110 Spadina Avenue, Suite 400 Toronto ON Canada M5V 2K4 Lucinda Gergley-Garner lgergleygarner@cineflix.com

Clearwater Documentary

9009 - 99 St. Edmonton AB Canada T6E 3V6 W www.clearwaterdoc.ca Niobe Thompson niobe@clearwatermedia.com

Cogent/Benger Productions

1352 Bathurst Street, Suite 201 Toronto ON Canada M5R 3H7 W www.cogentbenger.com Christopher Sumpton cas@cogentbenger.com

Collective Friction

Toronto ON Canada Jake Chirico jake.chirico@gmail.com

CTV, EPI, Discovery Channel Canada

9 Channel Nine Court Scarborough ON Canada M1S 4B5 W www.exploration.ca Tony Leadman tony.leadman@ctv.ca

Discovery Channel

9 Channel Nine Court Scarborough ON Canada M1S 4B5 W www.discovery.ca Lindsay Cowan Dotchison Lindsay.CowanDotchison@ bellmedia.ca Edwina Follows edwina.follows@bellmedia.ca

Discovery Channel Canada

9 Channel Nine Court Scarborough ON Canada M1S 4B5 W www.discovery.ca Fadi Issa Fadi.Issa@bellmedia.ca Paul Lewis paul.lewis@bellmedia.ca Ken MacDonald ken.macdonald@bellmedia.ca

E Klinck Research

282 Napier Street Collingwood ON Canada L9Y 3T3 W www.elizabethklinck.com Elizabeth Klinck e.klinck@rogers.com

eOne Television

175 Bloor Street East Suite 600 North Tower Toronto ON Canada M4W3R8 W www.entertainmentonegroup. com/ Michael Kot mkot@entonegroup.com

Explora/Radio-Canada

1400 Rene-Levesque East, Office A76-81A Montreal Canada H2L 2M2 W exploratv.ca/ Michel Pelletier michel.pelletier@radio-canada.ca

Galafilm

443 St-Vincent Montreal QC Canada H2Y 3A6 W www.galafilm.com Arnie Gelbart agelbart@galafilm.com

GAPC Entertainment

1550 Laperriere Avenue, Suite 102 Ottawa ON Canada K1Z 7T2 W www.gapcentertainment.com Hoda Elatawi helatawi@gapc.com

Handel Productions

424 rue Guy, Suite 110 Montreal Canada H3J 1S6 W www.handelproductions.ca Andre Barro andre@handelproductions.ca Alan Handel alan@handelproductions.ca

Hot Docs Canadian International Documentary Festival

110 Spadina Avenue, Suite 333
Toronto ON
Canada M5V 2K4
W www.hotdocs.ca
Brett Hendrie
bhendrie@hotdocs.ca
Elizabeth Radshaw
eradshaw@hotdocs.ca

Ideacom International

300 - 1000 Amherst St Montreal QC Canada H2L 3K5 W www.facebook.com/ ideacominternational Eric Michel em@javelotmedias.com Josette D. Normandeau zenith@istar.ca

Inigo Films

213-401 Richmond St. W Toronto ON Canada M5V 3A8 W www.inigofilms.com Alison Rose aer@inigofilms.com

Intuitive Pictures

1973 Falardeau Street Montreal QC Canada H2K 2L9 W www.intuitivepictures.ca Ina Fichman ina@intuitivepictures.ca

JKJ-TV International

43 Merrylynn Dr. Richmond Hill ON Canada L4C 5B2 Wally Longul wlongul@rogers.com

Matter of Fact Media

258 Wallace Avenue, Suite 104 Toronto ON Canada M6P 3M9 W www.matteroffactmedia.com Vanessa Dylyn Vanessa@matteroffactmedia.com

Merit Motion Pictures

248 Princess Street
Winnipeg MB
Canada R3B 1M2
W www.meritmotionpictures.com
Erna Buffie
ebuffie@mymts.net
Merit Jensen Carr
merit@meritmotionpictures.com

Northern Sky Entertainment

508 Riverside Drive Toronto ON Canada M6S 4B5 W www.northernskyentertainment.ca Wayne Abbott wayne@northernsky.tv

Partners in Motion

3701 Hastings Street, Suite 206 Burnaby BC Canada S4T 1E9 W www.partnersinmotion.com Ron Goetz rgoetz@partnersinmotion.com

PMA Productions

1617 Selkirk Ave. Montreal QC Canada H3H 1C7 W www.pmaproductions.com Kenneth Hirsch khirsch@pmaproductions.com

Primitive Entertainment

585 Bloor Street West, Suite 300 Toronto ON Canada M6G 1K5 W www.primitive.net Michael McMahon michael@primitive.net

Productions Nova Media

34, Gamble Est Bureau 201 Rouyn-Noranda Canada J9X 3B7 W productionsnovamedia.com Yves Lafontaine ylafontaine@ productionsnovamedia.com

Proper Television

409 King Street West, Suite 201 Toronto ON Canada M5V 1K1 W www.propertelevison.com Cathie James cathie@propertelevision.com Guy O'Sullivan erika@propertelevision.com

Proximity Films

229 Booth Av Toronto ON Canada M4M 2M7 W proximityfilms.ca Howard Fraiberg howard@proximityfilms.ca

Real to Reel Productions

3023 Dundas Street West Toronto ON Canada M6P 1Z4 W www.r2r.ca Anne Pick annepick@r2r.ca

Realscreen

366 Adelaide St W
Toronto ON
Canada M5V 1R9
Kelly Anderson
kanderson@brunico.com
Claire Macdonald
cmacdonald@brunico.com
Heidi Rotter
hrotter@brunico.com

Rock Yenta Productions

290 Westmoreland Avenue Toronto ON Canada M6H 3A5 Charlotte Engel rockyenta@gmail.com

Société Radio-Canada 1400 East Rene Levesque

Montreal QC Canada H2L 2M2 W radio-canada.ca/decouverte Helene Leroux helene.leroux@radio-canada.ca

Stornoway Productions

1200 Bay Street, Suite 304 Toronto ON Canada M5R 2A5 W www.stornowayproductions.com Criss Hajek chajek@stornoway.com

Stornoway Productions

1200 Bay Street, Suite 1004 Toronto ON Canada M5R 2A5 W www.stornowayproductions.com Paul Kemp pkemp@stornoway.com

Story House Media Group

250 The Esplanade, Suite 129 Toronto ON Canada M5A 1J2 Robyn Hutt hutt@storyhousepro.com Rachel Low low@storyhousepro.com

The Glasgow Group

179 Douglas Avenue Toronto ON Canada M5M 1G7 W www.alankay.ca Alan Kay akay@glasgrp.com

TVO

2180 Yonge Street Toronto ON Canada M4T 2T1 W www.tvo.org Christine Lee clee@tvo.org

Up Front Entertainment

49 Spadina Ave., Ste. 302 Toronto ON Canada M5V 2J1 W www.upfront.ca Barbara Barde bbarde@upfront.ca Linda Stregger Istregger@upfront.ca

YAP Films

96 Spadina Avenue, Suite 205 Toronto ON Canada M5V 2J6 W www.yapfilms.com Elliott Halpern ehalpern@yapfilms.com Elizabeth Trojian etrojian@yapfilms.com

Zoot Pictures 2060 Broad St.

Regina SK Canada S4P 1Y3 W www.zootpictures.com Leif Kaldor leif@zootpictures.com Leslea Mair leslea@zootpictures.com

CHINA

CCTV Documentary Channel

Room 438, Jingchengjiufang Hotel, No. 11 Yangfangdian Road, Haidian District
Beijing
China 100038
Wen Han
jessica_zyq@hotmail.com
Jin Li
jessica_zyq@hotmail.com
Wen Liu
jessica_zyq@hotmail.com
Tian Yuan
tianyuan@cctv.com
Yiqian Zhang
jessica_zyq@hotmail.com

CICC

2311 Huatian Plaza, Lianhuachi East Road, Haidian District Beijing China 100038 W www.cicc.tv Weina Kong weinakong@hotmail.com

CICC

23rd Floor Huatian Plaza,6 Xiaomachang, Haidian District Beijing China 100038 W www.cicc.tv Yuanyuan Wang wangyuanyuan@yahoo.com

LIC China

Gymnasium, National Sports Ctr., 1 An'ding Rd., Chaoyang Dist. Beijing China 100029 Shihui Cheng shihuicheng@lic-bcbc.com Luyue Jing laura@lic-bcbc.com

Redback Productions

112 Wukang Road Shanghai China 200031 W www.redbackproductions.tv Vivian McGrath viv@redbackproductions.tv

Wuhan TV

No. 677 Jian She Ave. Wuhan China Olivia Chen oriental365@163.com

CZECH REPUBLIC

Academia Film Olomouc

Univerzitni 3 Olomouc Czech Republic 77900 W www.afo.cz Veronika Klusakova klusakova@afo.cz

DENMARK

Danish Broadcasting Corporation

Emil Holms Kanal 20 Copenhagen C Denmark 09 99 Lars Ronnow Torp ltp@dr.dk

DR

Emil Holms Kanal 1 Copenhagen Denmark 999 Thomas Houkjaer thoh@dr.dk

FINLAND

YLE

Radiokatu 5, POB 46 Helsinki, Yleisradio Finland 00024 W www.yle.fi Nina Tuominen nina.tuominen@yle.fi

FRANCE

Agat Films & Cie/Ex Nihilo

52, Rue Jean-pierre Timbaud Paris France 75011 W www.agatfilms.com Blanche Guichou blanche.guichou@agatfilms.com

Altomedia

15 Rue D'hauteville Paris France 75010 W www.altomedia.com Gabriel Turkieh g.turkieh@altomedia.com

ARTE France

8 rue Marceau Issy-les-Moulineaux France 92785 cedex 9 W www.arte.tv Catherine Alvaresse c-alvaresse@artefrance.fr Hélène Coldefy h-coldefy@artefrance.fr Alec Herrmann a-herrmann@artefrance.fr Christine Reisen c-reisen@artefrance.fr

Bellota Films

6 Villa du Clos de Malevart Paris France 75011 W www.bellotafilms.fr Hind Saih hind-saih@bellotafilms.fr

Bonne Pioche Television

188 Rue De La Roquette Paris France 75011 W www.bonnepioche.fr **Emmanuel Priou** priou@bonnepioche.fr Alexandre Soullier a.soullier@bonnepioche.fr

Camera Lucida Productions

4 Cité Griset Paris France 75011 W www.cameralucida.fr Antoine Bamas abamas@cameralucida.fr

Crescendo Films

9 Rue Des Halles France 75001 W www.crescendofilms.fr Serge Guez sguez@crescendofilms.fr

Dassault Systemes

10 Rue Marcel Dassault Vélisy-Villacoublay France 78946 W 3ds com Marie-Pierre Aulas mariepierre.aulas@3ds.com

Doc En Stock

79 rue du Temple Paris France 75003 W en.docenstock.com/ **Emmanuel Leconte** eleconte@docenstock.com Elodie Polo Ackermann epolo@docenstock.com

Docside Production

40 Rue De L'eglise Paris France 75015 Guvader Gaëlle g.guyader@docsideproduction.fr

Films à Cinq

49, rue de Rochechouart Paris France 75009 W www.filmacing.com **Emmanuel Laurent** elaurent@filmsacinq.com

FL Concepts & Co/Jukurpa Medias

77 Rue De Charonne Paris France 75011 W www.flconcepts.com Frederic Lepage fr-lepage@wanadoo.fr

France 5/France Television Group

2-4 rue Marceau Issy-les-Moulineaux France 92130 Caroline Behar caroline.behar@francetv.fr

France Télévisions

2 rue Marceau Issy-les-Moulineaux France 92785 cedex 9 W www.francetelevisions.fr Ann Julienne ann.julienne@francetv.fr

France Télévisions

2-4 rue Marceau Issy-les-Moulineaux France 92130 Thierry Mino thierry.mino@francetv.fr

Galaxie Presse

76, rue du Faubourg St Denis Paris France 75010 W www.galaxie-presse.fr Thierry Caillibot t.caillibot@galaxie-presse.fr Romain Grumbach rgrumbach@galaxie-presse.fr

Gedeon Programmes

155 rue de Charonne Paris France 75011 W wwww.gedeonprogrammes.com Thibaut Martin tmartin@gedeonprogrammes.com Stéphane Millière

smilliere@gedeonprogrammes.com

Heliox Films

10 Avenue De Clichy Paris France 75018 W www.heliox.fr Pierre-François Decoufle pfd@heliox.fr

Illegitime Defense

111 Avenue Victor Hugo Paris France 75116 Arnaud Xainte xainte@illegitimedefense.com

INA

4 avenue de l'Europe Bry Sur Marne France 94360 W www.ina.fr Michele Gautard mgautard@ina.fr

Independent

6 Rue Guenegaud Paris France 75006 Germaine McCormack-Kos germaine.kos@gmail.com

Independent

Paris France Robert Salvestrin robert.salvestrin@gmail.com

Independent

Paris France Alexandra Stainov alexandra.stainov@gmail.com

Kwanza

40, rue de Paris Boulogne-Billancourt France 92100 W www.kwanza.fr Benjamin Ternynck bternynck@kwanza.fr

La Compagnie des Taxi Brousse

98 rue Jean Pierre Timbaud Paris France 75011 W www.cie-taxibrousse.com Laurent Mini lmini@cie-taxibrousse.com Maurice Ribiere mribiere@cie-taxibrousse.com Karim Samai ksamai@cie-taxibrousse.com

Lagardere Entertainment Rights

24 quai Alphonse le Gallo Boulogne Billancourt Cedex France 92513 W www.le-rights.com Eleonore de Prunele eleonore.deprunele@le-rights.com

Les Films d'Ici

62, Boulevard davout Paris France 75020 W www.lesfilmsdici.fr Charlotte Uzu charlotte.uzu@lesfilmsdici.fr

Mosaique Films

9 rue du chateau d'eau Paris France 75010 W www.mosaigue-films.com malik.menai@mosaique-films.com

Newen

TELFRANCE, 71 rue de la Victoire Paris France 75009 W www.telfrance.com Christine Le Goff legoff@telfrance.fr

Newen Distribution

71 rue de la Victoire Paris France 75009 Laetitia Recayte recayte@newendistribution.fr

Nilaya Productions

34 Boulevard Des Italiens Paris France 75009 Patricia Boutinard Rouelle p.boutinardouelle@nilaya.fr

Point du Jour International

23 Rue De Cronstadt Paris France 75015 Luc Martin-Gousset l.martingousset@pointdujour.fr

Program 33

33 Rue Trousseau Paris France 75011 W www.program33.com Fabrice Coat f.coat@program33.com

Saint Thomas Productions

Village D'entreprises Saint Henri. Rue Anne Gacon-Bat 302 Marseille France 13016 W www.saint-thomas.net Bertrand Loyer b.loyer@saint-thomas.net

Sunny Side of the Doc

21bis quai Maubec La Rochelle France 17000 W www.sunnysideofthedoc.com Krishan Arora krishan@sunnysideofthedoc.com Yves Jeanneau yjeanneau@sunnysideofthedoc.com

Terranoa

155, Rue De Charonne Paris France 75011 W www.terranoa.com Laetitia Doyle Idoyle@terranoa.com Isabelle Graziadey igraziadey@terranoa.com

Thelos

50 Rue Rambuteau Paris France 75003 W thelos.tv Stephane Nicolopoulos steph@thelos.tv

TV France International

5 Rue Cernuschi Paris France 75017 W www.tvfrance-intl.com Mathieu Béjot mathieu@tvfrance-intl.com

Upside Television

33 quai de Dion Bouton Puteaux France 92800 W www.upsidedistribution.com W www.upsidetelevision.fr Sebastien Deurdilly sdeurdilly@gmail.com Pauline Saint-Hilaire p.sh@upsidetelevision.com

Yuzu Productions

30 Rue Colonel Delorme Montreuil France 93100 W www.yuzu-productions.com Fabrice Esteve f.esteve@yuzu-productions.com

ZED

39 rue des Prairies Paris France 75020 W www.zed.fr Valerie Abita valerie.abita@zed.fr

ZED

42 Rue Eugène Carrière Paris France 75018 W www.zed.fr Manuel Catteau mcatteau@zed.fr

GERMANY

2KTV Filmproduktions

Neumuhlen 17 Hamburg Germany 22763 W www.2ktv.de Matthias Kopfmüller Matthiask@2ktv.de Gary Krosnoff Garyk@2ktv.de

Abbild-Agentur

Neuhofstr. 41 Moenchengladbach Germany 41061 Karin Embacher Karin.Embacher@t-online.de

Albatross World Sales

Schwetzinger Str. 51 Heidelberg Germany 69124 W www.albatrossworldsales.com Anne Olzmann anne.olzmann@ albatrossworldsales.com

Anthro Media

Nansenstr. 19, 12047 Berlin Germany 23611 W www.anthro-media.com Volker Barth volker.barth@anthro-media.com

ARD

Kantstrasse 71-73 Leipzig Germany 4275 W www.mdr.de Claudia Schreiner claudia.schreiner@mdr.de

ARD/NDR

Hugh-Greene-weg 1 Hamburg Germany 22529 W www.daserste.de Dirk Neuhoff d.neuhoff@ndr.de

Autentic

Grünwalder Weg 28d Oberhaching Germany 82041 W www.autentic.com Patrick Hörl p.hoerl@autentic.com

BBC Worldwide Germany

Im Media Park 5B Cologne Germany 50670 Isabelle Helle isabelle.helle@bbc.com

Berlin Producers

Prenzlauer Allee 36 Berlin Germany 10405 W www.berlin-producers.de Kristian Kaehler kristian.kaehler@fernsehbuero.de

docdays productions

Berlin Germany 10119 W www.docdays.de Antje Boehmert ab@docdays.de

DOKfilm Fernsehproduktion

August-Bebel-Strasse 26-53 Potsdam Germany 14482 W www.dokfilm.de Dr. Jost-Arend Boesenberg j.boesenberg@dokfilm.de

Eco Media TV Produktion

Vorsetzen 53 Hamburg Germany 20459 W www.ecomediatv.de Dominic Egizzi egizzi@ecomediatv.de Stephan Lamby lamby@ecomediatv.de

Fact+Film

Hastedter Osterdeich 222 Bremen Germany 28207 W www.fact-film.de Michael Wolff wolff@fact-film.de

Gebrueder Beetz Filmproduktion Hamburg

Eppendorfer Weg 93a Hamburg Germany 20259 W www.gebrueder-beetz.de Ira Beetz i.beetz@gebrueder-beetz.de

Hoferichter & Jacobs GmbH

Scheffelstrasse 31a Leipzig Germany 4277 Karin Leske k.leske@hoferichterjacobs.de

Independent

Metzer Str. 3 10405 Berlin Berlin Germany 10405 Annette Baumeister anbaumeister@aol.com

Independent

34 Riessersee Strasse Garmisch-Partenkirchen Germany 82467 Ruth Berry ruth_wildberry@web.de

Independent

Obentrautstr.53 Berlin Germany 10963 W www.rudolph-herzog.de Rudolph Herzog rudolph@rudolph-herzog.de

Independent

Kurfuerstenstrasse 29 Munich Germany 80801 Andrea Zimmermann zimmermannandrea@t-online.de

Jump-Media

Arndtstrasse 16 Hamburg Germany 22085 W www.jumpmedien.de Werner Vennewald Werner.Vennewald@jump-medien.de

Leonardo Film

Gottorpstr. 20 Oldenburg Germany 26122 W www.leonardofilm.de Elmar Bartlmae elmar@leonardofilm.de

Marco Polo Film AG

Handschuhsheimer Landstr. 73 Heidelberg Germany 69121 W www.marco-polo-film.de Annette Scheurich annette@marco-polo-film.de

MDR

Kantstrasse 71-73 Leipzig Germany 4275 Ulrich Brochhagen ulrich.brochhagen@mdr.de

ProSiebenSat.1 TV Deutschland

Medienallee 7 Unterfoehring Germany 85774 W www.prosiebensat1.com Hendrik Niederhoff Hendrik.Niederhoff@ ProSiebenSat1.com Thomas Von Hennet thomas.hennet@ProSiebenSat1.com

ProSiebenSat.1 TV Deutschland

Gutenbergstr. 1a Unterfoehring Germany 85774 W en.prosiebensat1.com Stefan Vaupel stefan.vaupel@ProSiebenSat1.com

ProsiebenSat.1 TV Deutschland

Gutenbergstr. 3 Unterfoehring Germany 85774 W www.prosiebensat1.de Carina Teutenberg Carina.Teutenberg@prosiebensat1.com

Spiegel TV

Ericusspitze 1
Hamburg
Germany 20457
W www.spiegelgruppe.de
Marc Brasse
marc_brasse@spiegel-tv.de
Kirsten Hoehne
kirsten_hoehne@spiegel-tv.de
Kay Siering
kay_siering@spiegel-tv.de

Spiegel TV Geschichte + Wissen

Grünwalder Weg 28d Oberhaching Germany 82041 W www.spiegel-geschichte.tv/ www.spiegel-wissen.tv Johannes Everding johannes_everding@spiegelgeschichte.tv

Story House Media Group

Michaelkirchstrasse 17-18
Berlin
Germany 10179
Jens Afflerbach
afflerbach@storyhousepro.com
Konstanze Beyer
beyer@storyhousepro.com
Simone Schillinger
Schillinger@storyhousepro.com
Thomas Zwiessler
zweissler@storyhousepro.com

Taglicht Media

Caesarstrasse 58
Cologne
Germany 50968
W www.taglichtmedia.de
Dennis Wells
dennis.wells@taglichtmedia.de
Bernd Wilting
bernd.wilting@taglichtmedia.de

Text und Bild Medienproduktion & Co.

Hofkurat-diehl-str. 6b Oberschleissheim Germany 85764 Angelika Sigl sigl@textundbild.de Christiane Streckfuss streckfuss@textundbild.de

Vidicom Media GmbH & Co. KG

Schulterblatt 58 Hamburg Germany 20357 W www.vidicom-tv.com Peter Bardehle Bardehle@vidicom-tv.com

WDR

Appellhofplatz 1 Cologne Germany 50667 W www.wdr.de/tv/home Claudia Heiss claudia.heiss@wdr.de Thomas Kamp thomas.kamp@wdr.de

WDR

Ludwigstr. 11 Cologne Germany 50667 W wdr-mediagroup.com Pamela Wershofen pamela.wershofen@ wdr-mediagroup.com

WDW Productions

Rosenheimerstrasse 145 Munich Germany 81671 W www.weltderwunder.de Nadja Zöttl nadja.zoettl@weltderwunder.de

werwiewas medienproduktion

Strausberger Platz 18 Berlin Germany 10243 Gregor Streiber gregor@werwiewas.com

ZDF

ZDF-Strasse 1

Mainz Germany 55127 W www.zdf.de Christian Dezer dezer.c@zdf.de Ulrike Grunewald grunewald.u@zdf.de Marita Huebinger huebinger.m@zdf.de Ricarda Schlosshan schlosshan.r@zdf.de

ZDF Digital Medienproduktion

ZDF-Strasse 1 Mainz Germany 55127 Christoph Caron caron.c@zdf-digital.com Michael Kaschner Kaschner.M@zdf-digital.com

ZDF Enterprises

Erich-Dombrowski-Strasse 1
Mainz
Germany 55127
W www.zdf-enterprises.de
Nikolas Huelbusch
nikolas.huelbusch@zdf-enterprises.de
Ralf Ruckauer
ralf.rueckauer@zdf-enterprises.de

ZDF German Television

ZDF Strasse 1 Unterfoehring Germany 85774 W www.zdf.de Christiane Goetz-Sobel goetz-sobel.c@zdf.de Klaus Heckenhahn heckenhahn.k@zdf.de Jens Monath monath.j@zdf.de Annette Tewes tewes.a@zdf.de

ZDF.neo

ZDF-Strasse 1 Mainz Germany 55127 Andrea Eisel Eisel.A@zdf.de Daniela Roessler Roessler.D@zdf.de

ZDF/3sat

Sendezentrum 2 Mainz Germany 55100 W www.3sat.de Katharina Finger Finger.K@zdf.de

ITALY

Doclab

Viale Giuseppe Mazzini 73 Rome Italy 195 W www.doclab.it Bettina Hatami bettina.hatami@doclab.it

RAI

Via Annia Faustina 1 Rome Italy 151 Barbara Gallavotti barbara.gallavotti@gmail.com

SD Cinematografica

Lungotevere Delle Navi, 19 Rome Italy 196 W www.sdcinematografica.it Roberto Dall'angelo roberto.dallangelo@ sdcinematografica.it

JAPAN

National Science Museum of Japan

Tokyo Japan Dr. Tsunemi Kubodera kubodera@kahaku.go.jp

NHK

Japan Tatsuhiro Beniko beniko.t-fy@nhk.or.jp Haruna Kimura kimura.h-ia@nhk.or.jp Hiroyuki Shirakawa shirakawa.h-du@nhk.or.jp Tomoyuki Shirakawa shirakawa.t-de@nhk.or.jp Midori Yanagihara midorijon@erols.com

NHK

2-2-1 Jinnan, Shibuya-ku Tokyo Japan 150-8001 W www.nhk.or.jp/english Sayumi Horie horie.s-gg@nhk.or.jp Kazuhiro Kitano kitano.k-fy@nhk.or.jp Tomoyuki Osato osato.t-ge@nhk.or.jp Daisuke Takama takama.d-fy@nhk.or.jp Hideki Tazuke tazuke.h-es@nhk.or.jp Shin Yasuda yasuda.s-hq@nhk.or.jp

NHK

3f, 5-5 Kamiyama-cho, Shibuya-ku Tokyo Japan 150-0047 Gen Sasaki sasaki.g-ey@nhk.or.jp

NHK Enterprises

3f, 5-5 Kamiyama-cho, Shibuya-ku Tokyo Japan 150-0047 W www.nhk-ep.co.jp/en/index.html Takahiro Hamano hamano-ta@nhk-ep.co.jp Hiromichi lwasaki iwasaki.h-fe@nhk.or.jp

MALAYSIA

Apparat

Kuala Lumpur Malaysia Nandita Solomon nansolo@gmail.com

Code Computer Design

259B, Jalan Bandar 12, Taman Melawati Kuala Lumpur Malaysia 53100 W ccdesign.com.my Gerard Benedict benedictgerard@gmail.com Harjit Kaur harjit37@yahoo.com

Dos Fellas

Kuala Lumpur Malaysia W www.dosfellas.com Justin Ong justin@dosfellas.com

Mataviareka

No 22-2 Jalan PJU 5/21, The Strand, Kota Damansara Ptealing Jaya Malaysia 47810 Ira Rakiz Md. Tuffile ira@mataviareka.com

Ministry of Information, Communication and Culture Malaysia

Kuala Lumpur Malaysia Ab. Ghaffar A. Tambi ghaffar@kpkk.gov.my

National Film Development Corporation Malaysia (FINAS)

Kuala Lumpur Malaysia Muhamad Rizal Mat Yasin rizfinas@gmail.com Subaidah Md. Top subaidah_m@yahoo.com Akmal Radzlan Mohd Rashid akmalrshd@yahoo.com

National Film Development Corporation Malaysia (FINAS)

Kompleks Studio Merdeka, Jalan Hulu Kelang Ampang Malaysia 68000 W www.finas.gov.my Mohd Naguib Razak naguibrazak@gmail.com

National Film Development Corporation Malaysia (FINAS) and University Malaysia Perlis (UniMAP)

96, Taman Pertiwi Indah, Jalan Kangr-Alor Setar, Seriab Kangar Perlis Malaysia 1000 Alternate: Kompleks Studio Merdeka, Jalan Hulu Kelang Ampang Selangor Malaysia, 68000 Professor Dr. Asiah Sarji asiah50@hotmail.com

Rack Focus Films

Kuala Lumpur Malaysia Yazid Ahmad yazid@rackfocusfilms.com.my

Wildman Pictures

Kuala Lumpur Malaysia W www.wildmanpictures.tv Ikhwan Rivai ikhwan@wildmanpictures.tv

NETHERLANDS

Off The Fence

Herengracht 105-107 Amsterdam Netherlands 1015 BE W www.offthefence.com Bo Stehmeier han@offthefence.com Ellen Windemuth ellen@offthefence.com

NEW ZEALAND

Auckland University of Technology

New Zealand Dr. Steve O'Shea

Independent

Waiheke Auckland New Zealand 1081 Steve Talley talleysr22@yahoo.com

NHNZ

5 Melville Street
Dunedin
New Zealand 9016
W www.nhnzmovingimages.com
W www.nhnz.tv
Caroline Cook
ccook@nhnz.tv
Phil Fairclough
philnhnz@gmail.com

POLAND

Graniza Polska

Grochowska 341/80 Warsaw Poland 03-822 Jacob Dammas jacob.dammas@graniza.pl

SINGAPORE

Film Formations Pte Ltd

1003 Bukit Merah Central, #03-09 INNO Centre Singapore 159836 W www.formations.com.sg Danko-Stefan Desker danko@formations.com.sg Mahan Ramos mahan.ramos@gmail.com

Independent

Singapore Tony Chow tony.chow40@gmail.com

Sitting In Pictures

1 Syed Alwi Road, Song Lin Building #04-04 Singapore 207628 W www.sittinginpictures.com Soh Kiak Chang sohkiak@sittinginpictures.com

SOUTH AFRICA

Africa Wildlife Films

P.O. Box 26693, Hout Bay Cape Town South Africa 7872 W www.africawildlifefilms.co.za Lynne Richardson lynne.awf@icon.co.za

Amariam Pictures

910 Imbali, 37 Mitchell Str Johannesburg South Africa 2198 W www.amariampictures.com Pascal Schmitz pascal@amariam.co.za

Great Light Sage Productions

47 Royal Oak Estate, Centre Road, Morningside, Sandton Johannesburg South Africa Mimi Kalinda mimik@greatlightsage.com

SPAIN

Media 3.14

Diagonal 177 Barcelona Spain 8018 W www.media314.cat Joan Ubeda jubeda@mediapro.es

SWEDEN

Deep Sea Productions

Rydboholms Gard Akersberga Sweden SE-18494 W www.deepsea.se Malcolm Dixelius malcolm@deepsea.se Martin Widman martin@deepsea.se

Scandinavian Communication

Amiralsgatan 5 Malmoe Sweden S-211 41 Jan Skogstrom jan@skogstrom.se

SVT

Oxenstiernsgatan 26 Stockholm Sweden SE-10510 Henrik Ekman henrik.ekman@svt.se

SWITZERLAND

CERN

Geneva Switzerland CH-1211 W www.cern.ch Kate Kahle kate.kahle@cern.ch

European Broadcasting Union

Ancienne Route 17A Grand Saconnex, Geneve Switzerland 1218 W www.eurovisiontv.com Laura Longobardi longobardi@ebu.ch

First Hand Films

Neunbrunnenstrasse 50 Zurich Switzerland 8050 W www.firsthandfilms.com Esther Van Messel esther.van.messel@firsthandfilms.com

TAIWAN

National Taiwan Sport University

6f., No.15, Aly. 47, Ln. 458, Bei Taipei City Taiwan 104 Chi-yung Moh cymoh@mail.ntsu.edu.tw

National Taiwan University

1, Sec. 4 Roosevlt Rd. Taipei Taiwan 10671 Cheng-jen Shih shihcj@ntu.edu.tw

Shih Hsin University

#16, Lane 23, Hansheng E. Rd., Banqiao Dist. New Taipei City Taiwan 220 W www.shu.edu.tw/index.asp Yu-Chen Chueh chueh426@gmail.com

Shih Hsin University

#1, Lane 17, Mu-cha Road, Sec. 1 Taipei Taiwan 116 W www.shu.edu.tw/index.asp James Chieh Hsiung chueh426@gmail.com

UK

1212 Productions

35 Bedfordbury, Covent Garden London UK WC2N 4DU W www.1212productions.co.uk Philip Armstrong-Dampier philip@1212productions.co.uk

AGB Films Ltd

Rustic Porch Pilcorn Street Wedmore, Somerset UK BS28 4AN Andrew Graham-Brown agbfilms@btconnect.com

AGB Films Ltd

Studio 013, Netil House, 1a Westgate Street London UK E8 3RL W www.agbfilms.co.uk Tom Mustill tom.mustill@gmail.com

Arrow Media

17-18 Margaret Street

London
UK W1W 8RP
W www.arrowmedia.com
Tom Brisley
tom.brisley@arrowmedia.com
John Smithson
john.smithson@arrowmedia.com
Thomas Viner
thomas.viner@arrowmedia.com

Atlantic Productions Brook Green House, 4 Rowan Road

Hammersmith London
UK W6 7DU
Anthony Geffen
anthonyg@atlanticproductions.co.uk
John Morris
johnm@atlanticproductions.co.uk
Ruth Roberts
ruthr@atlanticproductions.co.uk

BBC

BBC Media Centre, White City, 201 Wood Lane, Room Mc5 C4, London UK W12 7TQ Will Aslett will.aslett@bbc.co.uk

BBC

London UK Jodie Adams Jodie.adams@hotmail.co.uk Paul Cooke paul_see@live.co.uk vimeo.com/PaulCooke Eamon Hardy Eamon.hardy@bbc.co.uk

BBC

BBC Media Centre, White City, 201 Wood Lane London UK W12 7TQ Marcy Cox marcy.cox@bbc.co.uk Sarah Gibbs sarah.gibbs1@bbc.co.uk Jonathan Renouf Jonathan.Renouf@bbc.co.uk Helen Thomas helen.thomas-SCIENCE@bbc.co.uk

BBC

Room 6060 BBC Television Centre, Shepherds Bush London UK W12 7RJ W www.bbc.co.uk Martin Davidson martin.davidson@bbc.co.uk

BBC

BBC Media Centre, White City, 201 Wood Lane, Room 4600 London UK W12 7TS Amy Dowsett Caroline Percy caroline.percy@bbc.co.uk

BBC

BBC Television Centre, White City, Wood Lane, Room 6060 London UK W12 7RJ Cassian Harrison cassian.harrison@bbc.co.uk

BBC

BBC Scotland, 40 Pacific Quay Glasgow UK G51 1DA W www.bbc.co.uk Mark Hedgecoe mark.hedgecoe@bbc.co.uk

RRC

BBC Media Centre, Media Village, 201 Wood Lane, Mc5 D3 London UK W12 7TO W www.bbc.co.uk/programmes/ b006mgxf Aidan Laverty aidan.laverty@bbc.co.uk

BBC Earth

BBC Earth, Whiteladies Road Bristol UK BS8 2LR Neil Nightingale neil.nightingale@bbc.com

BBC Vision Productions

BBC Media Centre, White City, 201 Wood Lane, Room Mc5 D6 London UKW127TQ Andrew Cohen andrew.cohen@bbc.co.uk

BBC Worldwide

BBC Media Centre, White City, 201 Wood Lane, Room Mc1b4 London UK W12 7TO W www.bbcworldwide.com Suzanne McKenna suzanne.mckenna@bbc.com Mark Reynolds mark.reynolds@bbc.com

BBC Worldwide

BBC Media Centre, White City, 201 Wood Lane London UKW127TQ Philipp Schmid philipp.schmid@bbc.com

BBC Worldwide

BBC Media Centre, White City, 201 Wood Lane, Room Mc1b3 London UK W12 7TQ W www.bbcworldwide.com Jo Sermon jo.sermon@bbc.com

Bedlam Productions

22 D'arblay Street London UKW1F8EO Simon Egan rebecca@bedlamproductions.co.uk

Beyond Distribution

41/42 Berners Street London UKW1T3NB W www.beyond.com.au Yvonne Body yvonne_body@beyond.com.au

Blink Films

Biscuit Building, 10 Redchurch Street London UK E2 7DD W www.blinkfilmsuk.com Dan Chambers dan.chambers@blinkfilmsuk.com

Channel 4

124 Horseferry Road London UK SW1P 2TX W www.4producers.co.uk Jill Fullerton-Smith ifsmith@channel4.co.uk David Glover dglover@channel4.co.uk John Hay jhay@channel4.co.uk Kate Quilton kquilton@channel4.co.uk Sara Ramsden sramsden@channel4.co.uk

Cineflix Productions

28-32 Britannia Street London UKWC1X9JF W www.cineflixproductions.com **Rob Carey** rcarey@cineflix.com

Cineflix Rights

1st Floor, 1 Lorenzo Street London UKWC1X9DJ W www.cineflixrights.com Chris Bonney cbonney@cineflix.com Noel Hedges nhedges@cineflix.com

Darlow Smithson Productions

1st Floor, Shepherds Building Central, Charecroft Way London UK W14 0EE W www.darlowsmithson.com Ben Bowie Ben.Bowie@darlowsmithson.com Lucy King kinglucyann@gmail.com Dominic Rees-Roberts dominic.reesroberts@gmail.com vimeo.com/DominicReesRoberts lain Riddick lain.Riddick@darlowsmithson.com Emily Roe Emily.Roe@darlowsmithson.com

Julian.Ware@darlowsmithson.com

Simon Young Simon. Young@darlowsmithson.com

DGP

Julian Ware

75 St Margarets Road Twickenham UKTW1 2LL Dan Gold dangold@kbs.eclipse.co.uk

Discovery Communications Europe

Discovery House, 566 Chiswick High Road London UK W4 5YB Adam Jacobs adam_jacobs@discovery.com

Discovery Networks International

Discovery House, Building 2, Chiswick Park, 566 Chiswick High Road London UK W4 5YB Julian Bellamy Julian_bellamy@discovery.com

DOX Productions

84 Addison Gardens London UKW140DR W www.tvdox.com David Sington david.sington@tvdox.com

Dragonfly Productions

120 - 124 Curatin Road London UK EC2A 3SO Simon Dickson eleri.davies@dragonfly.tv Sanjay Singhal eleri.davies@dragonfly.tv

DRG

62-65 Chandos Place London UK WC2N 4HG Caitlin Meek-O'Connor c.meekoconnor@drg.tv

Earth-Touch Ltd

5th Floor, Fairgate House, 78 New Oxford Street London UKWC1A 1HB W www.earth-touch.com/ susan@earth-touch.com

Getty Images

101 Bayham Street London UK NW1 0AG Sofia Lennquist sofia.lennquist@gettyimages.com

Hardy Pictures

Pye Barn, Moulsford Wallingford UK OX10 9JD Justin Hardy justin@hardypictures.com

Icon Films

3rd Floor, College House, College Green Bristol UK BS1 5SP W www.iconfilms.co.uk Harry Marshall harry.marshall@iconfilms.co.uk

Icon Films

College House, 32-36 College Green Bristol UK BS1 5SP W www.iconfilms.co.uk Laura Marshall laura.marshall@iconfilms.co.uk

Impossible Pictures

58 Davies St London UKW1K5JF Jonathan Drake ionathan.drake@ impossiblepictures.co.uk Steve Maher gwyn@firestep.net

Independent

C/O 52 Woodsome Rd London UK NW5 1RZ Jonathan Drori congress@jondrori.com

Independent

Poynders End Hitchin UK SG4 7RX Dinah Lord dinah@dinahlord.co.uk

Independent

32 St John Street York UK YO31 7OT Liz McLeod LMcLeod@truenorth.tv

Independent

Flat 1b, 30 Nottingham Place London UKW1U5NP Amelia Vale ameliavale@hotmail.com

ITN Source

200 Gray's Inn Road London UKWC1X8XZ W www.itnsource.com Hanna Davies hanna.davies@itnsource.com

IWC Media

93-97 St. Georges Road Glasgow UK G3 6 IA W www.iwcmedia.co.uk Ross Harper ross.harper@iwcmedia.co.uk

IWC Media

Network House, 1 Ariel Way London UK W12 7SI Mike McDowall greta.diehl@iwcmedia.co.uk

Lillavision

3rd Floor Biscuit Building, 10 Redchurch Street London UK F27DD W www.lillavision.com Lilla Hurst lilla@lillavision.com

Lion Television

26 Paddenswick Road London UK W6 0UB W www.liontv.co.uk Richard Bradley richard.bradley@liontv.co.uk Nick Catliff Nick.catliff@liontv.co.uk Tessa James tessa.james@liontv.co.uk

Mallinson Sadler Productions

29 Lynedoch Street Glasgow UK G3 6EF W www.msptv.co.uk Crispin Sadler crispin_sadler@blueyonder.co.uk

medialab

36a Lambs Conduit Street London UKWC1N3LD W www.medialabuk.com Gillian Mosely gillianmosely@medialabuk.com

National Geographic Channels International

Shepherds Building East, Richmond Way London **UKW140DQ** Hannah Demidowicz hannah.demidowicz@fox.com Hamish Mykura hamish.mykura@fox.com

Nutopia

Kirkman House, 1st Floor, 12-14 Whitfield Street London UKW1T2RF W www.nutopia.com Ben Goold ben@nutopia.com Jane Root jane@nutopia.com

October Films

Lymehouse Studios, 30-31 Lyme Street, Camden London UK NW1 0EE W www.octoberfilms.co.uk Denman Rooke

denman_rooke@octoberfilms.co.uk

OR Media

5-6 Portland Mews, Soho London UKW1F8JG Christopher Mitchell alana.gilpin@ormedia.co.uk

Oxford Scientific Films

21-22 Warwick Street London UKW1B5NE W www.oxfordscientificfilms.tv Clare Birks cbirks@oxfordscientificfilms.tv Peter Collins pcollins@oxfordscientificfilms.tv Alice Keens-Soper aliceks@oxfordscientificfilms.tv

Periskope

33 Richmond Rd Oxford UK OX1 2JJ W www.periskope.tv Michael Barnes barnesmichael@btinternet.com

Picture Films

139 Roding Court Emlyn Gardens London UK W12 9UG W www.picturefilms.tv Tilman Remme tilman@picturefilms.tv

Pioneer Productions

32 Galena Road, Hammersmith London UK W6 0IT W www.pioneertv.com Stuart Carter stuart.carter@pioneertv.com Jeremy Dear jeremy.dear@pioneertv.com Kathryn Johnson kathryn.johnson@pioneertv.com Kirstie McLure kirstie.mclure@pioneertv.com

Third Floor, 13-21 Curtain Road London UK EC2A 3LT Dimitri Doganis simone@raw.co.uk

RedSiesta Films

8 Wolseley Avenue, Wimbledon Park London UK SW19 8BQ Vijay Mavjee vijay@redsiestafilms.tv

Renegade Pictures

Renegade Pictures, Unit 2b 6 Erskine Road London UK NW3 3AJ Alan Hayling alan.hayling@renegadepictures.tv

S4C

S4C Doc Fictoria Caernarfon UK LL55 1TH Llion Iwan llion.iwan@s4c.co.uk

Scorpion TV

3a, 140 Gray's Inn Road London UK WC1X 8AX David Cornwall david@scorpiontv.com

Sky Vision

5 Station Approach Chorleywood UK WD3 5PF W sky.com/skyvision Carl Hall Danny Tipping Danny.tipping@bskyb.com

Spring Films

47 Conduit Street London UKW1S2YP W www.springfilms.tv Richard Melman richard.melman@springfilms.tv

Pacific Quay, Govan Road Glasgow UK G51 1PQ Anne Laking anne.laking@stv.tv

TCB Media Rights

1 Kings Ride Gate, 10 Barley Mow Passage London UKTW105BL W www.tcbmediarights.com Paul Heaney paul.heaney@tcbmediarights.com

Terra Mater Factual Studios

45 Western Avenue, Thorpe Village Engham, Surrey UKTW208QB John Kelly kelly@merlinitv.freeserve.co.uk

Testimony Films

12 Great George Street Bristol UK B51 5RS W www.testimonyfilms.com Steve Humphries steve.humphries@testimonyfilms.com

The Project Factory

UK Kirsty Hunter kirsty@theprojectfactory.com

Tigress Productions

1-2 Oakfield Court. Oakfield Road, Clifton Bristol UK B58 1LT W www.tigressproductions.co.uk Dick Colthurst dickcolthurst@tigressproductions.co.uk

TV6 Limited

Borders Farm, Boarders Lane Ticehurst UK TN5 7LG W www.tv6.co.uk Richard Reisz richard.reisz@tv6.co.uk

UKTV

8th Floor, 245 Hammersmith Road London UK W6 8PW W www.uktv.co.uk Adrian Wills adrian.wills@uktv.co.uk

Wall To Wall

85 Gray's Inn Road London UK WC1X 8TX W www.walltowall.co.uk Jonathan Hewes jonathan.hewes@walltowall.co.uk

Wellcome Trust

London UK Helen Lambourne H.Lambourne@wellcome.ac.uk

Wellcome Trust

215 Euston Road London UK NW1 2BE W www.wellcome.ac.uk Dr. Lisa Lazareck I.lazareck@wellcome.ac.uk

Wide-Eyed Entertainment

32 Fitzroy Square London UK W1T 6EX W www.wide-eyedentertainment.co.uk Amy Foster amy.foster@ wide-eyedentertainment.com Jasper James jj@wide-eyedentertainment.com David McNab weemail@ wide-eyedentertainment.com

Wild Thring Media

Todsbridge, Far Wells Road Bisley UK GL6 7AQ Edwina Thring edwina@wildthringmedia.com

Windfall Films

1 Underwood Row London UK N1 7 LZ W www.windfallfilms.com David Dugan dugan@windfallfilms.com lan Duncan ian@windfallfilms.com Carlo Massarella carlo@windfallfilms.com Leesa Rumley leesa@windfallfilms.com

Words Make Pictures

Granard Lodge, Putney Park Lane London UK SW15 5HU John Lynch johnlynchmedia@gmail.com

Zig Zag Productions

13-14 Great Sutton St London UK EC1V 0BX W www.zigzag.uk.com Leila Monks leila.monks@zigzag.uk.com

Zodiak Rights

Avon House. Kensington Village, Avonmore Road London UK W14 8TS Emily Elisha emily.elisha@zodiakrights.com

USA

Archive-Based Productions

USA

Matthew White

Area 5, LLC

1406 C Valencia St. San Francisco CA USA 94110 Matt Chandronait matt@area5.tv

ASKlabs Documentary Film

46 Waltham St., Ste. 303a Boston MA USA 2118 W www.asklabs.com Alberta Chu alberta@asklabs.com

Azure Media

19 Midland Road Lynnfield MA USA 1940 W www.facebook.com/pages/ Azure-Media/371726303717 Anne Zeiser azeiser@azuremedia.org

BBC Worldwide

1120 Ave Of The Americas New York NY USA 10036 Greg Johnson greg.johnson@bbc.com

BBC Worldwide America

1120 Ave Of The Americas, 5th Fl New York NY USA 10036 Melissa Green melissa.green@bbc.com

CABLEready/CableU

98 East Avenue Norwalk CT USA 6851 W www.cableready.net Steve Cheskin stevecheskin@msn.com Gary Lico gary@cableready.net

Castle Pictures

39 Broadway, 3rd Floor New York NY USA 10006 Christopher Cassel Chris@castlepix.com

Cineflix

161 Avenue Of The Americas, 14th Floor New York NY USA 10013 Charles Tremayne ctremayne@cineflix.com

Creative Differences

W www.creatvdiff.com Amy Briamonte abriamonte@cdtvmail.com

CriticalPast

Suite 230-36 Reston VA USA W www.criticalpast.com/ Andy Erickson andy@criticalpast.com

12100 Sunrise Valley Drive,

CriticalPast

12100 Sunrise Valley Drive, Box E-230-16 Reston VA USA 20191 W www.criticalpast.com/ Jim Erickson Nepomuceno jim@criticalpast.com

Destination America

Caroline Perez

Discovery Channel

10100 Santa Monica Blvd 15fr Los Angeles CA USA 90067 Simon Andreae simon_andreae@discovery.com

Discovery Channel

One Discovery Place
Silver Spring MD
USA 20910
John Cavenagh
John_Cavanagh@discovery.com
Andrew Jackson
andrew_jackson@discovery.com
Christine Weber
Chris_Weber@discovery.com
Kristin_Wilcox
Kristin_Wilcox@discovery.com
Robert_Zakin
Robert_Zakin@discovery.com

Discovery Channel

10100 Santa Monica Blvd Los Angeles CA USA 90067 Howard Swartz howard_swartz@discovery.com

Discovery CommunicationsOne Discovery Place

Silver Spring Maryland
USA 20910
Wyatt Channel
Wyatt_Channel@discovery.com
Laurie Goldberg
Brian Lavin
Brian_Lavin@discovery.com
Kevin Loftis
Kaitlin McIntyre
Eileen O'Neill
Paul Schur
Leslie Schwerin
leslieschwerin@gmail.com

Discovery Communications

8045 Kennett Street Silver Spring MD USA 20910 Matt Jacobson matt_jacobson@discovery.com

Discovery Labs

Jim Boda
Jim_Boda@discovery.com
Federico Camacho
Federico_Camacho@discovery.com
Tony Neal
Tony_Neal@discovery.com
Adam Zuckerman
Adam_Zuckerman@discovery.com

Discovery Networks International

One Discovery Place Silver Spring MD USA 20910 Marion Said Marion_Said@discovery.com

Discovery Studios

8045 Kennett Street Silver Spring MD USA 20912 Michael Masland Michael_masland@discovery.com

DocumentaryTelevision.com

424 Henry St Brooklyn NY USA 11231 W www.documentarytelevision.com Peter Hamilton r2k@verizon.net

Engel Entertainment

535 Eighth Avenue, 7th Floor New York NY USA 10018 Emily Harding emily@engelentertainment.com Jessica Winchell-Morsa jessica@engelentertainment.com

Everwild Media

262 Central Park West New York NY USA 10024 W www.everwildmedia.com Katie Carpenter krrc@everwildmedia.com

FremantleMedia North America Inc.

4000 W Alameda Ave, 3rd Floor Burbank CA USA 91505 W www.originalproductions.com Thom Beers avalverde@origprod.com

Global Spark Media

34 Desbrosses Street, Suite 817 New York NY USA 10013 Anna Gecan annagecan@globalsparkmedia.com

Golden Gate 3D

300 California Ave. Bldg 2 Treasure Island, San Francisco CA USA 94130 Robert Mooring robert@gg3d.com

History

Mary Donahue Mary.Donahue@aenetworks.com Julian P. Hobbs julian.hobbs@aetn.com

Hoff Productions

5900 Hollis Street, Suite O Emeryville CA USA 94608 W www.hoff.tv Michael Hoff hoff@hoff.tv

Howard Hughes Medical Institute

4000 Jones Bridge Road Chevy Chase MD USA 20815 Lori Beane beanel@hhmi.org Sean B. Carroll carrolls@hhmi.org David Elisco eliscod@hhmi.org Sarah Goforth goforths@hhmi.org Laura Helft, Ph.D. helftl@hhmi.org Cheryl Moore Michael Rosenfeld mrosenfeld@hhmi.org

Independent

15 Bancroft Ave. Annapolis MD USA 21403 Steve Burns stevelburns@comcast.net

Independent

3286 SE Salmon St. Portland OR USA 97214 W www.laurafravel.com Laura Fravel laura@laurafravel.com

Independent

54 Wolfe Street Alexandria VA USA 22314 Chris Haws chris@haws.com

Independent

Marin County CA USA Steven Johnson stevenberlinjohnson@gmail.com

Independent

Grainne Keegan grainnekeeganbyrne@gmail.com

Independent

295 Greenwich St., 164 New York NY USA 10007 Celia Lowenstein leica.lowenstein@gmail.com

Independent

2501 Calvert Street, NW, Apartment 811 Washington DC USA 20008 Vinita Mehta, Ph.D. vinita.mehta@post.harvard.edu

Independent

Washington DC USA Lesley Norman lesnor@aol.com

Independent

2034 17th Street NW Washington DC USA 20009 Bridget Whalen-Hunnicutt bridgetwhalen@yahoo.com

ITN Source

48 Wall Street, Suite 1100 New York NY USA 10005 Nan Halperin nan.halperin@itnsource.com

Jackson Hole Wildlife Film Festival & Science Media Awards

240 S. Glenwood, PO Box 3940 Jackson WY USA 83001 W www.jhfestival.org Jessica Weeman jessica.weeman@gmail.com

Jumpstart Productions

Darrell Fetty jddt@sbcglobal.net

JWM Productions

6930 Carroll Avenue, Suite 600
Takoma Park MD
USA 20912
W www.jwmprods.com
Bill Morgan
billm@jwmprods.com
Amanda Rothman
amanda.rothman@jwmprods.com
Jason Williams
jasonw@jwmprods.com

KCTS 9 TV (PBS-Seattle)

401 Mercer Street Seattle WA USA 98109 Greg Moyer gmoyer720@gmail.com

Leftfield Productions

Brent Montgomery brent.montgomery@ leftfieldpictures.com

Lion Television

19 Fulton Street, Suite 500 New York NY USA 10038 W www.liontv.com Tony Tackaberry tony.tackaberry@liontv.us

Lone Wolf

10 Cottage Rd. South Portland USA 4106 Chris Bailey info@lonewolfdg.com Kirk Wolfinger chris@lonewolfdg.com

Lumiere Media

Frederic Lumiere frederic@lumieremedia.com

MacGillivray Freeman Films

P.O. Box 205
Laguna Beach CA
USA 92652
Patty Collins
pcollins@macfreefilms.com
Shaun MacGillivray
smacgillivray@macfreefilms.com

Media Central

11609 Brandy Hall Lane North Potomac MD USA 20878 W www.mediacentral.net Jay Schlossberg jay@mediacentral.net

Murphy PR

John Murphy info@murphypr.com

N.S. Bienstock Talent Agency

250 West 57th Street, Suite 333 New York NY USA 10107 W www.nsbtalent.com Lisa Zeff Izeff@nsbtalent.com

NASA's Goddard Space Flight Center

Dr. James Garvin

National Endowment for the Humanities

Karen Kenton Kkenton@neh.gov

National Geographic Channel

1145 17th Street NW Washington DC USA 20036 W www.natgeotv.com Allan Butler AButler@natgeotv.com Madeleine Carter mcarter@natgeotv.com Michael Cascio MCascio@natgeotv.com Germaine Deagan Sweet Gdeagan@natgeotv.com Michael Mavretic mmavretic@natgeotv.com JC Mills jmills@natgeotv.com Charlie Parsons cparsons@natgeotv.com Noel Siegel nsiegel@natgeotv.com

National Geographic Channels

1145 17th Street NW Washington DC USA 20036 Janet Han Vissering jvissering@natgeotv.com David Lyle dlyle@natgeotv.com Howard T. Owens HOwens@natgeotv.com

National Geographic Channels International

1145 17th Street NW Washington DC USA 20036 W channel.nationalgeographic.com Stephen Hunter shunter@natgeotv.com

National Geographic Television

1145 17th Street NW

Washington DC USA 200036 W www.nationalgeographic.com Karen Bass karenbass8@gmail.com Pamela Caragol Wells pwells@ngs.org Caroline Christopher cchristo@ngs.org Maryanne Culpepper mculpepp@ngs.org Jerry Decker jdecker@ngs.org Eleanor Grant egrant@ngs.org Jared Lipworth jlipworth@ngs.org Debbie London dlondon@ngs.org Geoff Luck Gluck@ngs.org

National Science Foundation

4201 Wilson Boulevard, Suite 885 Arlington VA USA 22230 W www.nsf.gov Valentine Kass vkass@nsf.gov

NBC Peacock Productions

30 Rockefeller Plaza New York NY USA 10112 Cara Biega cara.biega@nbcuni.com

NBC Universal, Media

30 Rockefeller Plaza New York NY USA 10112 Benjamin Ringe benjamin.ringe@nbcuni.com

NET Television (PBS)

1800 North 33rd Street Lincoln NE USA 68503 W netnebraska.org Gary Hochman ghochman1@unl.edu

Newmagic Communications, Inc.

New York NY USA 10012 W www.marcotempest.com Marco Tempest tempest@newmagic.com

NHNZ

4411 Oliver Street Hyattsville MD USA 20781 Shera Jenne sjenne@nhnz.tv

NOVA/WGBH

1 Guest Street
Boston MA
USA 2135
W www.pbs.org/wgbh/nova
Paula S. Apsell
psa@wgbh.org
Julia Cort
julia_cort@wgbh.org
Evan Hadingham
evan_hadingham@wgbh.org
Chris Schmidt
chris_schmidt@wgbh.org
Melanie Wallace
melanie_wallace@wgbh.org

Ocean Research and Conservation Association

Dr. Edie Widder

Passport to Knowledge/GHSPi

27 Washington Valley Road Morristown NJ USA 7960 Geoff Haines-Stiles ghs@passporttoknowledge.com

PBS

2100 Crystal Drive Arlington VA USA 22202 W www.pbs.org Bill Gardner wbgardner@pbs.org Laura Gordon legordon@pbs.org Beth Hoppe bchoppe@pbs.org Cara Liebenson cliebenson@pbs.org Sumner Menchero smenchero@pbs.org Jen Ruppmann jaruppmann@pbs.org John Wilson jfwilson@pbs.org

PBS International

10 Guest Street
Boston MA
USA 2135
W www.pbsinternational.org
Anna Alvord
agalvord@pbs.org
Nanci Church
nbchurch@pbs.org
Tom Koch
jtkoch@pbs.org
Betsy LeBlanc
bkleblanc@pbs.org
Charles Schuerhoff
chschuerhoff@pbs.org

Pixeldust Studios

4350 East West Hwy. Suite 350 Bethesda MD USA 20814 W www.pixeldust.tv Elizabeth Andrade elizabeth@pixeldust.tv

Powderhouse

212 Elm Street Somerville MA USA 2144 W www.powderhouse.net Tug Yourgrau tyourgrau@powderhouse.net

Providence Pictures

60 Eddy Street Providence RI USA 2903 W www.providencepictures.com Gary Glassman gary@providencepictures.com

Randall Productions, Inc.

310 West 99th Street, #708 New York NY USA 10025 W www.terrirandallproductions.com Terri Randall Terri@terrirandallproductions.com

Rock Shrimp Productions

345 Hudson Street, Suite 13003A New York NY USA 10014 Véronique Bernard VBernard@rockshrimproductions.com

Rubangfilms

3 Bethesda Metro Center Bethesda MD USA 20814 Anne Menotti amenotti@me.com

Rubangfilms

9912 Capitol View Ave Silver Spring MD USA 20910 David Ruck David.ruck@gmail.com

Santa Fe Productions

1100 Annie Street West Austin TX USA 78704 Lennlee Keep lennlee@santafeproductions.com

Science Channel

One Discovery Place Silver Spring MD USA 20910 Dexter Cole Dexter_Cole@discovery.com Rocky Collins Rocky_Collins@discovery.com Lindsay Foster Laurie Haughey Laurie_Haughey@discovery.com Brad Kohlenstein brad_kohlenstein@discovery.com Neil Laird Neil_Laird@discovery.com Bernadette McDaid Bernadette_McDaid@discovery.com Debbie Myers debbie_myers@discovery.com Katie Pyne

Smithsonian Networks

Julia_Wagman@discovery.com

Julia Wagman

1225 19th Street NW Washington DC USA 20036 W www.smithsonianchannel.com Chris Hoelzl c.hoelzl@smithsoniannetworks.com Charles Poe c.poe@smithsoniannetworks.com David Royle d.royle@smithsoniannetworks.com

Spiegel TV

1202 National Press Building Washington DC USA Karin Assmann kbassmann@yahoo.com

Stony Brook Films

1002 Stony Brook Road Brewster MA USA 2631 Paul Gasek sbfilms@comcast.net

Story House Media Group

2233 Wisconsin Ave NW Suite 420 Washington DC USA 20007 Karim Chrobog chrobog@storyhousepro.com Genevieve Croteau genevieve@storyhousepro.com Carsten Oblaender oblaender@storyhousepro.com Vincent Renner renner@storyhousepro.com Andreas Gutzeit gutzeit@storyhousepro.com

The New York Times/ NOVA scienceNOW

New York NY USA David Pogue mail@davidpogue.com

The Really Interesting Picture Company

33-21 163rd Street

Flushing NY USA 11358 W www.thereallyinteresting picturecompany.com Thomas Veltre tom.veltre@TheReallyInteresting PictureCompany.com

The Weather Channel Companies

205 East 42nd Street New York NY USA 10017 W www.weather.com Mary Ellen Iwata meiwata@weather.com

Trivalent Productions

4514 Laurel Ridge Drive Morgantown WV USA 26508 Diandra Leslie-Pelecky diandra@drdiandra.com

Twin Cities Public Television

172 East Fourth Street Saint Paul MN USA 55101 W www.tpt.org Joanna Baldwin Mallory jbaldwinmallory@tpt.org Richard Hudson rhudson@tpt.org

Universities Space Research Association (USRA)/Lunar and Planetary Institute (LPI)

3600 Bay Area Blvd. Houston TX USA 77058 John Blackwell Blackwell@epo.usra.edu

US Independents

32 Cluf Bay Road Brunswick ME USA 4011 W www.usindependents.com Meg Villarreal mvillarreal2@earthlink.net

Veriscope Pictures

212 Fayerweather Street
Cambridge MA
USA 2138
W www.veriscopepictures.com
Daniel Levitt
daniel.levitt@comcast.net

Vulcan Productions

505 5th Ave. S, Suite 900 Seattle WA USA 98104 W www.vulcanproductions.com Bonnie Benjamin-Phariss bonnieb@vulcan.com

WETA

3939 Campbell Avenue Arlington VA USA 22206 Jeff Bieber

WGBH

Arlington VA USA 22202 Denise Dilanni denise_diianni@wgbh.org

Woollyworks

2645 Polk St. #307 San Francisco CA USA 94109 Adrienne Ciuffo adrienne.ciuffo@mac.com

ZDF Enterprises

488 Madison Avenue, Suite 1100 New York NY USA 10022 Nelsa Gidney nelsa@ngidney.com